

2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1452

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1452
January 31, 2013
18118

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to eligibility to participate in the defined contribution retirement plan; relating to calculation of accumulated fund balances under the public employees retirement system.

Minutes:

You may make reference to "attached testimony."

Chairman Jim Kasper opened the hearing on HB 1452 and is the sponsor of this bill. He turned the hearing over to Vice Chair Randy Boehning.

Jon Godfread, ND Chamber of Commerce appeared in support of this very modest change to the current law.

Rep. Gail Mooney All the lines crossed out is related to being able to allow our employees to opt. into a 401K?

Jon Godfread It is my understanding that it is voluntary if the employees would like to join a 401K plan, they have that option.

Rep. Grande is in favor of this bill. This gives people an opportunity, especially the new, young people coming in who have a great knowledge on how to invest their money and want to have that flexibility and portability in their employment package.

Rep. Gail Mooney Does this apply toward all employees who are in PERS in addition to county employees, etc?

Rep. Grande This bill for all incoming state employees.

Neutral:

Sparb Collins, Executive Director of the North Dakota Public Employees Retirement System appeared for explanation. **Attachments 1 and 2.** (5:50-7:22)

Brad Ramirez, Retirement Plan Actuaries with Segal Company, reviewed the actuarial implications of the bill. (7:32-10:49)

Rep. Vernon Laning Regarding the cost of the plan, if the present retirement was 100% funded I assume the cost hit on this plan would be considerably less. Is that true?

Brad Ramirez That is correct. He referred him to Table 2 on Attachment 2.

Rep. Steven Zaiser I assume there is a disparity in the change in terms of the cost going up is the size of the group?

Brad Ramirez That is correct.

Rep. Gail Mooney For the pool that remains in ND PERS, their costs rise accordingly?

Brad Ramirez Correct.

Vice Chair Randy Boehning You were going to work up a couple of examples of what kind of money we are talking about.

Tammy Dixon, Retirement Plan Actuary with Segal Company, appeared. We looked at two examples of how much funds would be transferred out of the DB plan if a person left. For a 30-year old with 10 years of service and a salary of \$40,000 the value of that benefit that would be transferred out would be around \$55,000. For a 55-year old with a \$40,000 salary and 10 years of service, the value of that benefit that would be transferred would be about \$70,000.

Sparb Collins Continuing with the second page of Attachment 1 (14:06-21:47)

Rep. Gary Paur It sounds like you are basically testifying about the shortcomings of this path. If we were funded 105% or 110%, I imagine the numbers would be encouraging?

Sparb Collins In 1999 the plan was over 100% funded. What that meant, there was no fiscal cost to this. It was a cost neutral plan at that time. The issue here is that it is not 100% funded so as you take that money out and put it over here, there is not as much money here to pay it off and that is why the increase in contributions.

Rep. Gary Paur You are assuming 8% rate of return. If you end up with a 5 or 6% return, would it not be advantageous to have that unfunded liability removed?

Sparb Collins If in the long term we make less than 8%, it would increase the unfunded liability. Transferring these people over doesn't change that.

Rep. Gary Paur Removing some of that liability by people going to a defined contribution plan, would that not minimize some of that loss in unfunded liability?

Sparb Collins If they move over to the defined contribution plan and it is not paid for, it is going to increase the unfunded liability right away. The amount necessary to pay the unfunded liability becomes greater right away. If it is paid for, this is all neutralized. You have some of that liability move over in a paid for manner and yes, you have a little bit less exposure.

Rep. Gary Paur Let's say the return ended up at 6%. If everybody went to defined contribution and completely pulled out of the system, that would be preferable to continuing with the rate of 6%.

Sparb Collins We would still have several hundred million dollars of unfunded liability that wouldn't be paid for. We still have the basic formula for retirement. \$10 is funded from two places, \$4 might come from contributions and \$6 comes from investment returns.

Rep. Gail Mooney The political subdivisions who are not involved in being able to move over to a defined benefit plan would also have to have their share increased?

Sparb Collins The main PERS plan is a single pool, so when the contributions go up, it goes against the entire pool.

Rep. Gail Mooney Our county is with PERS. They just experienced an increase to be able to help make up the costs of the loss of the 2008 experiences. If we did this, they are ultimately going to have pay more yet to be able to make up more of the deficit?

Sparb Collins Yes, unless the bill is modified.

Rep. Gail Mooney In order to move this into the new program, initial startup costs would be across the board \$105,000? There are 18,000 people in PERS?

Sparb Collins He agreed on the startup costs. About 18,000 and 6,000 or 7,000 retirees are in PERS. We pay into the economy of North Dakota about \$80 million a year. PERS has received about \$1 billion in contributions. Today we have about \$1.6 billion in assets and we paid out into ND economy about \$1 billion. We have received that by going out and collecting in markets outside the state and bringing it in.

Rep. Gail Mooney Roughly 10-15% are anticipated to move over to a defined benefit program?

Sparb Collins Out of that 18,000, 10,000 are state employees and we are saying about 15% of that number potentially would move over. We would get about 1,200 new state employees a year through turnover, about 10%.

Rep. Gail Mooney We would exasperate the instability of the PERS program as it stands even right now?

Sparb Collins Where it is funded. If it is funded, then it is fine.

Opposition:

Stuart Saevelkoul, Executive Director of the North Dakota Public Employee Association, appeared in opposition of the bill. **Attachment 3.** He also provided **Attachment 4 Kayla Pulvermacher, NDEA**, indicating opposition. (32:59-38:04)

Rep. Scott Louser gave reasons for a defined contribution plan. Defined contributions are portable, transferrable as an asset to a family, are not subject to a rule of 80, 85, 90 or multipliers, current or future employment and contribution of others, legislative changes including increase in contributions by the employer or the employee, employees own both sides upon separation prior to retirement rather than just the employee side, provide flexibility in choosing the investment risk level, don't rely on actuarial assumptions, substantially easier to manage from an administrative level, provide more cash in employee's pocket paycheck to paycheck because of lower contribution levels necessary, and somewhat unique, employees that retire and reenter the workforce would have full access to their benefits based on their additional contributions. Would you agree those are benefits to a defined contribution?

Stuart Saevelkoul I believe some of those are benefits of some traditional defined contribution plans. The legislature has taken places to provide portability for those that are in the defined benefit plan with ND PERS. Regarding contribution increases, the defined contribution plan that exists now for our state employees, if in essence if you pass this bill, future contribution increases will still impact those employees. I think the remainder of your advantages spoke to the freedom and control over the fund. That flexibility and power are not what our members are asking for. The defined benefit is so great because we have things like the state investment board that can go out and hire people that can make asset allocations that make sense for these employees.

Rep. Scott Louser Do you know what the dollar amount of the unfunded liability is?

Stuart Saevelkoul I am not the authority on that, but my understanding for ND PERS it is somewhere in the vicinity of \$600 million. Our defined benefit plan is essentially already a hybrid plan. A lot of states are trying to switch to what ND already has.

Rep. Marie Strinden It would take us longer to take us to 100%. Could you speak to that?

Stuart Saevelkoul The bill introduced by Rep. Scott Louser that you heard was in regard to the teachers' fund for retirement. He was attempting to make the TFFR to the same standard that ND PERS is trying to hold itself to. You asked if this bill was passed in its present form, would it hurt the fund? Yes, it would. If you really want to be about giving employees choice, I can't see why you wouldn't see the intellectual honesty in letting those that opt it out back in 1999 back in.

Rep. Marie Strinden I am just assuming that if we want the TFFR to emulate this fund, we would want this fund also to be 100% funded.

Rep. Gail Mooney When we think of state employees, we think of those right here. Who are we talking about?

Stuart Saevelkoul State employees range from the president of NDPEA, college faculty members, social workers, snow plow operators, etc.

Josh Askvig, Associate State Director of Advocacy for AARP North Dakota, appeared in opposition. **Attachment 5** testimony was presented. (48:06-56:30)

Bill Kalanek, Association for Public Employees, appeared in opposition. **Attachment 6** testimony was presented. (56:57-58:12)

Rep. Vernon Laning How many members in your association?

Bill Kalanek Approximately 1,000.

Rep. Scott Louser If we could take some of the options suggested earlier and reflect those on the implications of the bill as it is written, amend it, pay for it, and allow for new hires to have a choice of defined benefit or defined contribution, how do your members feel about that?

Bill Kalanek The ability to choose as it was presented in this bill is kind of a one sided choice as we came into it.

Rep. Scott Louser If we gave a new choice for new hires, how would your members feel about that?

Bill Kalanek I feel that would jeopardize the long term status of the fund.

Tom Ricker, ND AFL-CIO appeared in opposition. I have participated in both a defined benefit and defined contribution plan. I have seen my defined contribution plan roller coaster. At one point I saw lose it 50% of its assets. I know where my defined benefit plan is and I know what it is going to be.

Rep. Gary Paur If we switch to a defined contribution, there would be several hundred million dollars worth of liability?

Sparb Collins If you get less people, you still have the same debt but it is just spread over a smaller amount.

Rep. Gary Paur Not totally, because you would remove a lot of the liability.

Sparb Collins If everybody could leave, that would be correct.

Rep. Gary Paur What would be the liability left if everybody left?

Sparb Collins The unfunded liability in the plan today, what is left to be paid off is \$870 million.

Rep. Gary Paur That includes the liability of the people that are still working?

Sparb Collins That is the unfunded portion. The funded is about \$2 billion.

Rep. Gary Paur Don't they take their portion when they leave?

Sparb Collins No.

Rep. Gary Paur How much money would it take to withdraw those people out of the system and pay for it?

Sparb Collins \$800 million.

Rep. Gary Paur Two years ago we raised the contributions, etc. and look at it again. How much progress have we made in the past two years?

Sparb Collins Two years ago the prospect that we faced was that the long term funded status of the plan was going to deteriorate to zero by 2040 or 2042. What you approved last session was the first two years. What that accomplished was two of the goals. It stopped the downward trend and it stabilized the plan at around the 50-60% over that 30 year period.

Rep. Gary Paur Two years ago you were at about 64-65%?

Sparb Collins Two years we were still recognizing the loss. Two years ago we were about 70%.

Rep. Scott Louser What was the rate of return in 2012?

Sparb Collins Our fiscal year is July 1 to June 30. It was about zero. The year before was about 21%.

Rep. Scott Louser You said if we didn't act last session, we would have been on the path to zero in 30 years. Tell us what would happen if we didn't act and we were at zero. What becomes the obligation?

Sparb Collins There is a provision in state law that says this benefit is part of the contractual relationship between the employer and the employee. That argues that this benefit is payable no matter what the assets are to the people. We had a small plan known as OASIS which ended up as a pay as you go plan. If you don't is the potential that all of that plan comes up as pay as you go.

Vice Chair Randy Boehning referred to an example that Brad Ramirez gave. How much would he have to make up if he opted back in after ten years?

Sparb Collins Right now you cannot do that. If given another election, it all depends on the structure of that election.

Rep. Gail Mooney Up until 2008 how did the PERS fund look?

Sparb Collins We got our first hit in 2000 with the tech market going down. We dropped at that time from a little over 100% funding status into the 90% level. In 2008 we lost about 24 1/2 %.

Hearing was closed.

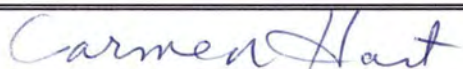
2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1452
February 8, 2013
18628

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to eligibility to participate in the defined contribution retirement plan; relating to calculation of accumulated fund balances under the public employees retirement system.

Minutes:

You may make reference to "attached testimony."

Chairman Jim Kasper opened the session on HB 1452. The amendment was handed out. **Attachment 1.** He gave an overview of defined benefit plans and what is going on nationally as well as in the state of North Dakota. (End 4:35) The original bill was going to open up the defined contribution plan to currently employed employees at their choice and it was going to open up the defined contribution plan for newly hired employees also at their choice. The cost was in the \$40-\$60 million range. This amendment simply says that all newly hired employees after July 30, 2013 shall be provided an opportunity to participate in a defined contribution plan.

Rep. Ben Koppelman Is there an employer provided defined contribution plan as an alternative? If they do choose to opt out of the defined benefit program, would they have to their wages confiscated to fund it?

Chairman Jim Kasper All currently hired employees are staying exactly where they are at. There is no ability to opt out of the defined benefit plan. For those newly hired employees after July 30, 2013, they will have a one- time option. When you are eligible to enroll in the retirement plan, you either choose the defined benefit or defined contribution. You make one choice when your option is there and that is where you are going to stay.

Rep. Ben Koppelman I understand. If I choose defined contribution, is that managed by the same people that manage the other plan? What percentage of my income has to go into that every month if I do choose as a new employee to go the defined contribution route?

Chairman Jim Kasper There is a defined contribution plan right now. The defined contribution formula is the same as what it currently is.

Rep. Ben Koppelman That percentage of your income wouldn't change.

Chairman Jim Kasper No.

Rep. Gail Mooney How would the amendment affect the fiscal note?

Chairman Jim Kasper I don't know because we can't get a fiscal note until the amendment passes.

Rep. Karen Rohr What if the employee chooses not to participate in the defined benefit nor the defined contribution?

Chairman Jim Kasper They have no choice. It is one or the other.

Rep. Gary Paur We have raised the contribution requirements. Would the defined contribution deposit requirements be the same? If we raise them for the defined benefit plan, would they also go up for the defined contribution?

Chairman Jim Kasper The formula stays the same as it is for both plans. There are bills floating around right now that will change some contribution levels in both.

Rep. Jason Dockter made a motion to adopt the amendments.

Rep. Karen Rohr seconded the motion.

Rep. Bill Amerman Do you know what percentage of raise for state employees we are looking at this biennium?

Chairman Jim Kasper They are across the board in the Governor's budget. At this point, we don't know.

A voice vote was taken and the **motion carried to adopt the amendment.**

Rep. Scott Louser made a motion for a Do Pass as amended and rereferred to appropriations.

Rep. Jason Dockter seconded the motion.

A roll call vote was taken and resulted in **DO PASS AS AMENDED AND REREFERRED TO APPROPRIATIONS, 10-4.** **Rep. Scott Louser** is the carrier of this bill.

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$9,440,000	\$8,352,000	\$9,440,000	\$8,352,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$4,368,000	\$4,368,000
Cities	\$0	\$1,873,000	\$1,873,000
School Districts	\$0	\$4,672,000	\$4,672,000
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow existing and new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 15% of the existing members would elect to transfer and 10% of newly hired employees annually thereafter (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.66% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$28.6 million. When this option was originally offered to non-classified state employees in 1999, 38% elected to transfer. Over the last 10 years about 16% of newly hired employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8%. The above projections use a lower election rate for existing employees due to the current economic conditions. Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. The second area contributing to the actuarial effect is that existing employees are allowed to transfer the full present value of their accrued benefit. This would result in a transfer of assets greater than the assets that currently support the benefit, causing the plan to take a loss for each member transferring that would need to be paid by increased contributions from those remaining. If this provision was modified to make it present value less unfunded liability it would reduce the cost for the main hybrid plan. If we assumed that the number making this election to transfer was annually 10% of the existing members and 5% of the new hires, then the main hybrid plan contributions would need to increase by .95% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$16.4 million. Alternatively, if we assume that 20% of the existing members elect to transfer and 15% of the new hires then contributions would need to increase by 2.42% in the Main/Hybrid Plan. This would have a total biennium cost of \$41.7 million. As illustrated, the cost varies substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

- 3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgate pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$106,000.

- C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.66%, assuming 15% of the existing members transfer and 10% of the new hires, or .95%, assuming 10% of the existing members transfer and 5% of the new hires, or 2.42% if 20% of the existing members transfer and 15% of the new hires. Contribution requirements for the other smaller system would need to change as well. At the level of 15% of the existing members and 10% of the new hires, the Judges contribution would need to go up by 1.64%, the law enforcement contribution would need to go up .76% and National Guard would need to go up .46%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

2/8/13
C. Kasper

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1452

Page 1, line 2, replace the first "and" with a comma

Page 1, line 2, after "54-52.6-02" insert ", and 54-52.6-15"

Page 2, line 12, replace "elects to participate in the retirement plan under this chapter" with "is hired after July 30, 2013"

Page 6, line 3, remove "The board shall provide an"

Page 6, remove lines 4 and 5

Page 6, line 6, replace "pursuant to rules adopted by the board." with "At the time of hire the board shall provide an opportunity for an eligible employee to elect to participate in the defined contribution retirement plan under this chapter in lieu of the public employees retirement system under chapter 54-52, pursuant to rules adopted by the board. A new hire may exercise this election anytime from the time of hire until the expiration of thirty days following the completion of a probationary period. If an eligible employee's terms of employment do not provide for a probationary period, that eligible employee has thirty days following the first day of employment within which to exercise this election."

Page 6, line 6, remove "a member of the public"

Page 6, line 7, replace "employees retirement system under chapter 54-52 to transfer to" with "an eligible employee to participate in"

Page 6, line 8, remove "For an individual who"

Page 6, line 9, replace "elects to transfer" with "In the case of an eligible employee who makes an election after the date of hire, the election will have the effect of that eligible employee transferring"

Page 6, line 10, after the underscored comma insert "and"

Page 7, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

The board shall provide information to new hires and employees who are eligible to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter."

Renumber accordingly

Date: 2-8-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1452

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0405. 02001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Dockter Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chairman Randy Boehning			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Marie Strinden		
Rep. Karen Karls			Rep. Steven Zaiser		
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Gary Paur					
Rep. Karen Rohr					
Rep. Vicky Steiner					

*Vote to
adopt amendment
motion carried*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-8-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1452

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Louser Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		X
Vice Chairman Randy Boehning	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Marie Strinden		X
Rep. Karen Karls	X		Rep. Steven Zaiser		X
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Gary Paur	X				
Rep. Karen Rohr	X				
Rep. Vicky Steiner	X				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Louser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1452: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1452 was placed on the Sixth order on the calendar.

Page 1, line 2, replace the first "and" with a comma

Page 1, line 2, after "54-52.6-02" insert ", and 54-52.6-15"

Page 2, line 12, replace "elects to participate in the retirement plan under this chapter" with "is hired after July 30, 2013"

Page 6, line 3, remove "The board shall provide an"

Page 6, remove lines 4 and 5

Page 6, line 6, replace "pursuant to rules adopted by the board." with "At the time of hire the board shall provide an opportunity for an eligible employee to elect to participate in the defined contribution retirement plan under this chapter in lieu of the public employees retirement system under chapter 54-52, pursuant to rules adopted by the board. A new hire may exercise this election anytime from the time of hire until the expiration of thirty days following the completion of a probationary period. If an eligible employee's terms of employment do not provide for a probationary period, that eligible employee has thirty days following the first day of employment within which to exercise this election."

Page 6, line 6, remove "a member of the public"

Page 6, line 7, replace "employees retirement system under chapter 54-52 to transfer to" with "an eligible employee to participate in"

Page 6, line 8, remove "For an individual who"

Page 6, line 9, replace "elects to transfer" with "In the case of an eligible employee who makes an election after the date of hire, the election will have the effect of that eligible employee transferring"

Page 6, line 10, after the underscored comma insert "and"

Page 7, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

The board shall provide information to new hires and employees who are eligible to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter."

Renumber accordingly

2013 HOUSE APPROPRIATIONS

HB 1452

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

HB 1452
2/14/13
Job 19000 and 19009

☐ Conference Committee

Committee Clerk Signature

Meredith Traholt

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 4 of section 54-52-01 and sections 54-52.6-01, 54-52.6-02, and 54-52.6-15 of the North Dakota Century Code, relating to eligibility to participate in the defined contribution retirement plan; and to repeal section 54-52.6-03 of the North Dakota Century Code, relating to calculation of accumulated fund balances under the public employees retirement system.

Minutes:

You may make reference to "attached testimony."

Recording job 19000

Rep. Jim Kasper, District 46: Introduced the bill.

Chairman Delzer: Did you ask, on the original Fiscal Note if the expenditure side is the money that would actually go into defined contributions? It's not actual additional cost, it's just going to a different spot?

Rep. Kasper: The way the actuaries have designed how they give us reports, for future projections in the defined benefit plan they are assuming ongoing contributions.

Chairman Delzer: I understand that will be considered a detriment to the defined benefit plan. On the expenditure side, how are they coming up with that? It's going into defined contributions instead of defined benefits, but it's not actual additional cost.

Rep. Kasper: No, I believe the contributions would be the same.

Rep. Grande: You come up with the expenses on this because the actuaries and PERS count on all new employees to pay for the current employees' retirements.

Rep. Guggisberg: When this came through the employee benefits interim committee, I asked why weren't allowing employees the choice to go from defined contribution to defined benefit; Sparb Collins said it would help the plan. There are employees that would like to make the move. Have you considered allowing that with an amendment?

Rep. Kasper: The way it would affect the plan in a positive way is if you were in the defined benefit plan and you choose to move to the defined contribution plan, you have two

theoretical accounts. You have your theoretical account of what is there to fund your retirement benefit, and you have your theoretical account of where we're short. You have two numbers. Sparb was saying we will allow you to move to the defined contribution plan but you're going to take the smaller amount. The unfunded liability that is theoretically going to be funded down the road, that stays with the defined benefit plan. That would benefit the plan. We could have gotten to a zero cost if we would have done that, but what employee in their right mind would leave 40% of their potential retirement benefit in the defined benefit plan? It wouldn't have worked. When you open it up and let prior employees move from defined benefit to defined contribution, now the actuary says, what if 10% move? 15%? Now you're looking at \$30-60M of cost. It's not going any place until this legislative body makes a decision to do something different.

Chairman Delzer: Further questions? Thank you. The committee took a short recess.

Recording job 19009

Chairman Delzer: Financially there aren't a whole lot of questions about this, it's just whether or not we want to allow new hires the option of being on a defined contribution plan, or not; it doesn't force them in any way, it just allows them the option.

Rep. Boe: Has this been tried before?

Chairman Delzer: We allow it for the unclassified positions, but we've never had it done for the classified.

Rep. Streyle moved Do Pass on HB 1452, seconded by **Rep. Kempenich**.

Rep. Glassheim: The discussion last year was moving away from defined benefit. Undermining the defined benefit program would cost the state millions of dollars in the long run. The effect would be to diminish the percentage needed for long term viability as people leave it. We're setting ourselves up for greater deficits to make up in 10, 20 years.

Chairman Delzer: At some point in time, the state has to pay the amount to cover that, when there is a change. This does not force it, it allows. The issue on defined contributions is that it is your money and you take it with you when you leave. With defined benefits, if you leave too early, you don't take it with you.

Rep. Dosch: These plans are dangerous, and this shows why no one in the private sector does this anymore. At least this gives them the option; if we don't do something, nothing will change. I see nothing wrong with giving people an option.

Chairman Delzer: Further discussion? Seeing none, a roll call vote was done. The motion carried 16 Yes, 6 No, 0 Absent. **Rep. Streyle** will be our carrier, but we will return it back to the policy carrier.

FISCAL NOTE
Requested by Legislative Council
02/12/2013

Amendment to: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$6,028,000	\$5,278,500	\$6,028,000	\$5,278,500
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$2,792,500	\$2,792,500
Cities	\$0	\$1,197,500	\$1,197,500
School Districts	\$0	\$2,986,500	\$2,986,500
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide NEW State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 10% of the new members would elect to transfer (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.06% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$18.3 million. Over the last 10 years about 16% of newly hired nonclassified employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8% . Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. If we assumed that the number making this election to transfer was annually 5% of the new hires, then the main hybrid plan contributions would need to increase by .58% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$10.0 million. Alternatively, if we assume that 15% of the new hires, then contributions would need to increase by 1.57% in the Main/Hybrid Plan. This would have a total biennium cost of \$27.0 million. As illustrated, the cost varies substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgate pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$22,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.06%, assuming 10% of the new hires transfer, or .58%, assuming 5% of the new hires transfer, or 1.57% if 15% of the new hires transfer. Contribution requirements for the other smaller systems would need to change as well. At the level of 10% of the new hires, the Judges contribution would need to go up by 1.07%, the law enforcement contribution would need to go up .52% and National Guard would need to go up .34%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$9,440,000	\$8,352,000	\$9,440,000	\$8,352,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$4,368,000	\$4,368,000
Cities	\$0	\$1,873,000	\$1,873,000
School Districts	\$0	\$4,672,000	\$4,672,000
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow existing and new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 15% of the existing members would elect to transfer and 10% of newly hired employees annually thereafter (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.66% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$28.6 million. When this option was originally offered to non-classified state employees in 1999, 38% elected to transfer. Over the last 10 years about 16% of newly hired employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8% . The above projections use a lower election rate for existing employees due to the current economic conditions. Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. The second area contributing to the actuarial effect is that existing employees are allowed to transfer the full present value of their accrued benefit. This would result in a transfer of assets greater than the assets that currently support the benefit, causing the plan to take a loss for each member transferring that would need to be paid by increased contributions from those remaining. If this provision was modified to make it present value less unfunded liability it would reduce the cost for the main hybrid plan. If we assumed that the number making this election to transfer was annually 10% of the existing members and 5% of the new hires, then the main hybrid plan contributions would need to increase by .95% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$16.4 million. Alternatively, if we assume that 20% of the existing members elect to transfer and 15% of the new hires then contributions would need to increase by 2.42% in the Main/Hybrid Plan. This would have a total biennium cost of \$41.7 million. As illustrated, the cost varies

substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgate pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$106,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.66%, assuming 15% of the existing members transfer and 10% of the new hires, or .95%, assuming 10% of the existing members transfer and 5% of the new hires, or 2.42% if 20% of the existing members transfer and 15% of the new hires. Contribution requirements for the other smaller system would need to change as well. At the level of 15% of the existing members and 10% of the new hires, the Judges contribution would need to go up by 1.64%, the law enforcement contribution would need to go up .76% and National Guard would need to go up .46%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

Date: 2/14/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1452

House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Streyle Seconded By Rep. Kempenich

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Rep. Streyle	X	
Vice Chairman Kempenich	X		Rep. Thoreson	X	
Rep. Bellew	X		Rep. Wieland	X	
Rep. Brandenburg	X				
Rep. Dosch	X				
Rep. Grande	X		Rep. Boe		X
Rep. Hawken	X		Rep. Glassheim		X
Rep. Kreidt	X		Rep. Guggisberg		X
Rep. Martinson		X	Rep. Holman		X
Rep. Monson	X		Rep. Williams		X
Rep. Nelson	X				
Rep. Pollert	X				
Rep. Sanford	X				
Rep. Skarphol	X				

Total Yes 16 No 6

Absent 0

Floor Assignment Rep. Streyle

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1452, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **DO PASS** (16 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1452 was placed on the Eleventh order on the calendar.

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1452

2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee

Missouri River Room, State Capitol

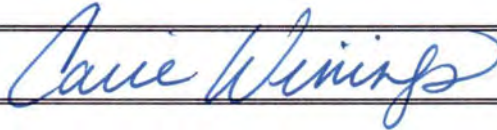
HB 1452

03/07/2013

Job Number 19574

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to eligibility to participate in the defined contribution retirement plan; relating to calculation of accumulated fund balances under the public employees retirement system.

Minutes:

Chairman Dever: Opened the hearing on HB 1452.

Representative Bette Grande, District 41: Testified in support of the bill. (Prime sponsor Kasper was not present yet so testified on general points of the bill and left the detailed explanation to Kasper) This bill is the opportunity for new employees into the Public Employees Retirement System to have the opportunity to opt into a defined contribution plan verses into the defined benefit plan. This would be a one-time option upon hire. There are concerns over the fiscal note due to the fact that these are not even employees and how they would affect a PERS DB plan. We have actuaries that are assuming that the contributions over normal costs will help pay for the unfunded liability even before you are employed. When you think about that, it seems a bit odd, and it should. You can think of it like the social security system. We are taking normal costs and adding on contribution costs and paying out into the future with that. This new person coming in, even though they work for five years and receive nothing for that because they are not vested until that time frame, they are kicking in all that money and it is paying for someone else's retirement, not their own. Does that work for you? It is kind of a backwards way to do things. I want

you to realized that if this is going to be the fiscal note and it is going to be so costly to this plan, that maybe we have some great flaws in the defined benefit plan. This has been a discussion over many years. The hiring of someone is to cover unfunded liability costs. It is the great unfunded liability and how we should handle it that is the issue. Currently the actuaries say that normal cost is 10% and we are currently putting in 12% and if SB 2059 is passed, we are going to be up to 16% of salary going into this retirement. 10% could be going to someone's retirement, but another 6% of your salary is being pulled out and paying for someone else on the end game. You are seeing many states moving away from these plans. That is why you have the social security discussion of getting some of the young people out of the plan in order to decrease the end game liability. What needs to be taken into effect with these numbers that are not on this fiscal note is what the decrease in the unfunded liability is when you don't put more people into a failing plan. I ask you to consider this option for the new employee to participate in their own retirement.

(7:15) Representative Kasper, District 46: Testified as sponsor and in support of the bill. Explained the bill by walking through the bill page by page.

(13:47) Senator Cook: You said that the language that is deleted in Section 3 is not needed; isn't that language that allows an existing state employee to move from a defined benefit to a defined contribution plan?

Representative Kasper: That is correct and we are repealing that. Current employees can move from the defined benefit from the defined contribution and this repeals it.

Senator Cook: So you are making it available for only new employees then?

Representative Kasper: Correct.

Senator Cook: Then this will have a financial effect on the defined benefit plan today.

Representative Kasper: We always get our actuarial reports which I have seen on the fiscal note and we are talking about the unfunded liability and the actuarial assumption that all newly hired employees are going to be participating with contributions to the unfunded liability and this would remove those dollars that would have potentially gone into the defined benefit plan to reduce the unfunded liability.

Senator Cook: You have no appropriation in here for money to try to keep the defined benefit plan at its current fiscal sum. Is that your intent to just make it up with increased contributions when it becomes less actuarial sound? Or is it that the state has to hold some of that harmless?

Representative Kasper: We just heard SB 2059 on the House side which addresses the unfunded liability with increased employer and employee contributions. When you look at that increased funding if that occurs, the dollar amounts here are very insignificant when we look at the total cost of the fund. Therefore I am not making any appropriations for the fiscal note. I think the amount of increased contributions will take care of that over time. Not only increased contributions, but higher earnings of the fund. As you know, the actuaries when they are making these assumptions are making a five year rolling average of the earnings of the fund. We are just beginning to come out of the 2007 to 2009 huge down market. As we get rid of the last two years of slow moving earnings, and get into the new market that has recovered substantially, I think the earnings on the fund will more than make up for this fiscal note.

Vice Chairman Berry: That language that repeals the ability to switch, is that basically the policy going forward for stability?

Representative Kasper: I think that is a good assumption. The problem in moving back and forth is that it affects the future projected earnings of the fund. If the idea is that we

somehow terminate the defined benefit plan in the future and only allow new hires to go into the defined contribution plan, this is a voluntary. I would have preferred to make it mandatory but I don't think that bill would have passed the house.

Vice Chairman Berry: If in fact it was made mandatory for all to be defined contribution, what would be the state's liability?

Representative Kasper: I have had those types of discussions over numerous days with Sparb Collins a couple of weeks ago. We had all kinds of projections if we did just that. The cost was anywhere from \$36 million to \$66 million depending on how it was structured. We are not going that route right now, but it was not that large. I think in the last legislative session there was a bill that would have required newly hired participants to go into the defined contribution only and we were talking about setting aside a lump sum amount to cover the unfunded liability. That bill failed.

Representative Grande: Explained the repealer section.

Senator Cook: Only new employees.

Representative Grande: Currently new employees that are unclassified can do this. We are going to say that classified and unclassified can do this. They are taking out the unclassified language and they are putting in all employees.

(21:15)Sharon Schiermeister, Chief Operating Officer, North Dakota Public

Employees Retirement System: See Attachment #1 for testimony in neutral position on the bill.

(41:40)Stuart Savelkoul, Executive Director, NDPEA: See Attachment #2 for testimony in opposition to the bill.

(47:55)Jolene Rohde, Impairment Auditor at Workforce Safety and Insurance: See Attachment #3 for testimony in opposition to the bill.

(54:45)Chairman Dever: Was this option provided in the House hearing?

Jolene Rohde: No.

Stuart Savelkoul: Yes it was but it was resisted.

(55:03)Tami Olson, WSI Employee: See Attachment # 7 for testimony in opposition to the bill.

(59:15)Jeanine Doerr, prior WSI Employee and current employee of Job Service North Dakota: See Attachment # 4 for testimony in opposition to the bill.

(1:06:05) Chairman Dever: When you moved to Job Service, do you continue on your defined contribution plan?

Jeanine Doerr: That is correct. I am not permitted to switch.

(1:06:48) Bill Kalanek, Association for Public Employees: See Attachment #5 for testimony in opposition to the bill.

(1:08:25) Josh Askvig, AARP of North Dakota: See Attachment # 6 for testimony in opposition to the bill.

NDEA stood in opposition to the bill.

Chairman Dever: Closed hearing on HB 1452.

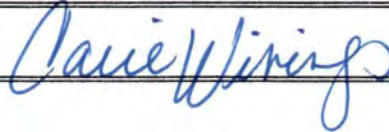
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee Missouri River Room, State Capitol

HB 1452
03/28/2013
Job Number 20652

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened HB 1452 for committee discussion. See Attachments #1A, #1B, and #1C for proposed amendments.

Committee Discussion: The committee discussed the purpose of the bill. SB 2059 was the second half of the recovery plan for PERS that we passed in the Senate in the first half and then it failed in the House. The amendments proposed will put SB 2059 back into this bill. There is a negative effect in this bill without SB 2059. SCR 3003 is a constitutional resolution that will cap the foundation aid stabilization fund and put money into a special fund and as I understand it for the purpose of restoring the pension plan when it hits zero. Which in Chairman Dever's view it is likely to happen at some point without SB 2059. The issues of the defined benefit plan in regards to all of these bills were discussed and what the options are with the amendments that had been drafted. The committee agreed that it is an issue that a solution needs to be found to before the session ends.

(9:40) Sparb Collins, PERS: See Attachment #2 for a copy of a graph that shows what HB 1452 with the recovery plan (HB 2059) does for the status of the plan. The green line represents what would have happened if HB 2059 was passed and the remaining lines depict different percentages from there. There is no indication of how many people will switch.

(14:47)Committee Discussion: The committee asked a few questions in regards to the chart.

(15:30) Sparb Collins: See Attachment #3 for a copy of a graph that shows what would happen if HB 1452 was passed without the recovery plan (HB 2059). The unfunded liability would decrease and the unfunded liability would be greater than \$6 billion.

(16:30) Senator Cook: What kind of participation are we seeing with our defined benefit hybrid plan?

Sparb Collins: Everyone goes into it except non-classified employees get the opportunity to opt out. We have about 20,000 people in that plan. When we get a new person they do not bring an unfunded liability to us. It is just what has accrued for the past participants.

Chairman Dever: Do I recall correctly that the 20,000 is about 7,500 to 8,000 state employees and the rest are political subs?

Sparb Collins: It is about 50/50. That is one of the things that makes this cheaper. If the defined contribution option was offered to everyone else besides state employees, it would be even more expensive. If you offer for everyone to leave and they do, you are going to have a huge headache. Our 5 year average for people opting to leave is about 6-7%. Those are difficult numbers for us to pin down so I am not sure how exact they are.

Chairman Dever: The improvement to the fund by bringing those back in was not real significant was it?

Sparb Collins: It improves their - offering the people who elected out the opportunity to rejoin the fund. It shows that the cost of doing that is about 14%. If you put in HB 2059 they are all up to about 16%.

Chairman Dever: I understand that if we did that the money in their defined contribution plan would be transferred to the defined benefit plan.

Sparb Collins: Everything would have to come back to the defined benefit plan. Only people that had been there for the entire amount of time would be able to do it. We would not want someone who had left the defined benefit plan and got \$60,000, left state employment and cashed all out and then come back for a year or two and have an account balance of \$5000 and be able to get all of it. When they come back over, their vesting will change.

Chairman Dever: Your projection is based on the assumption that they will all come?

Sparb Collins: When Segal looked at it, they took the entire account balance and did it pretty much as a group.

(21:25) Chairman Dever: I understand that since the market has recovered from 2008 that the fund has not recovered similarly because we continue to pay out benefits.

Sparb Collins: It is because the recovery is based on the assets of the recovered funds not the original amount. You need more back to recover completely. Keep in mind that this could not have happened at a worse time. In 2000 the bill passed and we offered all these employees the opportunity to enroll and they got that opportunity in the fall, the markets were strong and they all enrolled and made their elections and in December we asked them to set their asset allocations and we transferred the money in February and in March the market tanked. They started to recover and then we hit the second one in 2008. It has been a difficult ride.

Vice Chairman Berry: Should they not come back up pretty close to what they were or did changes get made that caused them not to or were they more conservative?

Sparb Collins: Once you go into the defined contribution plan the asset allocation is your responsibility and it has remained substantially the same throughout this entire period

because we are a long term investor. We do not try to do market timing. You get back to where you were but not a gain.

Chairman Dever: There are some comments that Pam would like to make in regards to the states bond rating and how the retirement plan affects that.

Pam Sharp, OMB: I have a strong interest in the state's bond rating and the Governor and I visit them frequently and I have conversations with Moody's and Standard and Poors several times a year maybe quarterly for them to get an update of what is going on. They pay very close attention to our state, especially now that things have been really happening. One of the things that they are very concerned about is the state's pension and our unfunded liability. They have made it very clear to us for the last few years, particularly S and P, that the only thing standing between the state and a AAA bond rating is how we fund our pension plan and that we meet our actuarial required contribution. They have gone so far as to say that if we don't get that under control, they might downgrade us. I think it would be such a shame for North Dakota to have to suffer a downgrade in the financial situation we have been in. The fiscally conservative strong management we have had in the state for many years should be recognized. I think we are a AAA state. We look at all the other AAA states and compare us and we seem to be much better than they are in all aspects. Of the AAA states, all of them have defined benefit and 10 of the 12 have a component of a defined contribution. In talking to S and P, one of their main criteria is the shape of the pension fund. All three of these amendments are very important because all of them get us closer to meeting our rating.

(30:40) Vice Chairman Berry: Of the states that have a better bond rating, what is the overall fiscal status if their general fund? Is it that much better than ours?

Pam Sharp: They are in worse shape than we are, but their pensions are strong. They have a large set of criteria that they look at.

Vice Chairman Berry: What would the AAA rating do for the state?

Pam Sharp: It does give us a better bond rating and right now we are not doing much bonding since we are flush with cash, but once we have a AAA, something very bad would have to happen for them to downgrade us. In the future we might want to borrow money and it would be a cheaper interest rate to borrow money. It is a reputation thing.

(33:53) See Attachment #4 for report that contains the states that have AAA rating.

(35:26) Senator Schaible: If the state goes to a defined contribution plan and at that point, I would imagine that would ruin our rating because we would have a large unfunded balance.

Pam Sharp: If we were to choose that path, as long as we are meeting our actuarial required contribution for the current plan that we have, that is what they look for. We could still do that on a gradual basis and make sure that we meet that arc payment every year.

Sparb Collins: Back in 1999 when we offered this, we did not have this discussion because the plan was 100% funded. The quickest way to get yourself able to do this easily is to pay off the unfunded liability and get it paid off and that is what this plan does. The second way is what we offered in our testimony in HB 1452. You split the contribution between the normal cost and the amortization payment - it gets complicated - if you leave the amortization payment with the defined benefit plan and you only give the defined contribution people the normal cost going forward; which is substantially less. There are ways to do it.

Chairman Dever: The point is that we have to have the money in the bank when they come due.

Sparb Collins: Every time the ARC payment is not paid, and it has not been paid for quite a few years and that is basically a loan from the retirement system to the state at 8% so it continues to accrue. If you don't have that plan - See Attachment #5 for example of what would happen in that case. The green line is the unfunded liability. That is what we are trying to manage here.

Senator Cook: In looking at the second amendment, the expiration date would apply to not only HB 1452 but it would apply to SB 2059.

Sparb Collins: No, and if it did apply to SB 2059 then we would have the same issue with the rating.

Senator Cook: That amendment would have to be rewritten to clarify it.

Senator Cook: Moved Amendments 13.0405.03001.

Senator Poolman: Seconded.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Motion Carries.

Chairman Dever: If we look at the other amendment, we would need it to apply to sections 1, 2, 3 ...

Senator Cook: I think for the engrossed bill with these amendments on here, it is going to be 3, 8, 10, 12, and 14.

Senator Cook: Moved to make the portions of the amended bill that were in 1452 effective only through July 31st, 2017.

Vice Chairman Berry: Seconded.

Vice Chairman Berry: Does this affect the bond rating?

Pam Sharp: The date helps.

Chairman Dever: It would cause us to look at this again in the 2017 session.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carries.

(50:00)Sparb Collins: Reminds the committee that there are administrative amendments needed on the bill. See Attachment #6. (Explains the amendments.)

(54:20)Senator Nelson: Moved to Amend - Attachment #6.

Senator Marcellais: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carries.

Senator Cook: Moved a Do Pass As Amended and Rerefer to Appropriations.

Senator Poolman: Seconded.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Chairman Dever: Carrier.

FISCAL NOTE
Requested by Legislative Council
02/12/2013

Amendment to: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$6,028,000	\$5,278,500	\$6,028,000	\$5,278,500
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$2,792,500	\$2,792,500
Cities	\$0	\$1,197,500	\$1,197,500
School Districts	\$0	\$2,986,500	\$2,986,500
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide NEW State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 10% of the new members would elect to transfer (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.06% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$18.3 million. Over the last 10 years about 16% of newly hired nonclassified employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8% . Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. If we assumed that the number making this election to transfer was annually 5% of the new hires, then the main hybrid plan contributions would need to increase by .58% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$10.0 million. Alternatively, if we assume that 15% of the new hires, then contributions would need to increase by 1.57% in the Main/Hybrid Plan. This would have a total biennium cost of \$27.0 million. As illustrated, the cost varies substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgate pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$22,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.06%, assuming 10% of the new hires transfer, or .58%, assuming 5% of the new hires transfer, or 1.57% if 15% of the new hires transfer. Contribution requirements for the other smaller systems would need to change as well. At the level of 10% of the new hires, the Judges contribution would need to go up by 1.07%, the law enforcement contribution would need to go up .52% and National Guard would need to go up .34%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$9,440,000	\$8,352,000	\$9,440,000	\$8,352,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$4,368,000	\$4,368,000
Cities	\$0	\$1,873,000	\$1,873,000
School Districts	\$0	\$4,672,000	\$4,672,000
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow existing and new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 15% of the existing members would elect to transfer and 10% of newly hired employees annually thereafter (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.66% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$28.6 million. When this option was originally offered to non-classified state employees in 1999, 38% elected to transfer. Over the last 10 years about 16% of newly hired employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8%. The above projections use a lower election rate for existing employees due to the current economic conditions. Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. The second area contributing to the actuarial effect is that existing employees are allowed to transfer the full present value of their accrued benefit. This would result in a transfer of assets greater than the assets that currently support the benefit, causing the plan to take a loss for each member transferring that would need to be paid by increased contributions from those remaining. If this provision was modified to make it present value less unfunded liability it would reduce the cost for the main hybrid plan. If we assumed that the number making this election to transfer was annually 10% of the existing members and 5% of the new hires, then the main hybrid plan contributions would need to increase by .95% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$16.4 million. Alternatively, if we assume that 20% of the existing members elect to transfer and 15% of the new hires then contributions would need to increase by 2.42% in the Main/Hybrid Plan. This would have a total biennium cost of \$41.7 million. As illustrated, the cost varies

substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgate pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$106,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.66%, assuming 15% of the existing members transfer and 10% of the new hires, or .95%, assuming 10% of the existing members transfer and 5% of the new hires, or 2.42% if 20% of the existing members transfer and 15% of the new hires. Contribution requirements for the other smaller system would need to change as well. At the level of 15% of the existing members and 10% of the new hires, the Judges contribution would need to go up by 1.64%, the law enforcement contribution would need to go up .76% and National Guard would need to go up .46%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

3/29/13
TS 1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, after the second comma insert "54-52.6-09,"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and"

Page 1, line 5, after "system" insert "; to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015.
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The

state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1."

Page 1, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the

fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase annually by two percent increase~~, beginning with the reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. 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 5. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.
2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by one percent~~, beginning with the monthly reporting period of January 2013, January 2014, and January 2015.
3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the

contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 6. 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.

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, and ~~with an additional increase of~~ annually by one percent, beginning with the reporting

549

period of January 2013, January 2014, and January 2015. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 7. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 8. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

6 of 9

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase annually by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014 and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 9. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one-half of one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment."

Page 2, line 12, remove "who is hired after July 30, 2013"

Page 3, after line 2, insert:

"SECTION 11. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present

7 d9
monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ increases annually by two percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, after line 26, insert:

"**SECTION 13. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015.

- 4 of 9
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase ~~ef~~annually by one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.
 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."

Page 7, line 30, remove "new hires and"

Page 8, after line 8, insert:

"SECTION 16. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 17. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 18. EFFECTIVE DATE. Sections 3, 10, 12, 14, and 15 of this Act become effective on October 1, 2013.

SECTION 19. EXPIRATION DATE. This Act is effective through July 31, 2017."

Renumber accordingly

Date: 3/28

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1452

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0405.03001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Cook Seconded By Senator Poolman

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais		✓
Senator Dwight Cook	✓				
Senator Donald Schaible		✓			
Senator Nicole Poolman	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/28

Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1452

Senate Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

*effective through
July 31st
2017
were 1452*

Legislative Council Amendment Number

make portions of the bill that

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Cook Seconded By Senator Berry

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/28

Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1452

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Attachment # 6

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nelson Seconded By Senator Marcellais

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/28
Roll Call Vote #: 4

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1452

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0405.03004 04000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Cook Seconded By Senator Poolman

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry		✓	Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible		✓			
Senator Nicole Poolman	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Dever

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1452, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1452 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, after the second comma insert "54-52.6-09,"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and"

Page 1, line 5, after "system" insert "; to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015.
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015.~~ If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1."

Page 1, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase annually by two percent increase, beginning with the reporting period of January 2013, January 2014, and January 2015.~~ The temporary employee shall also 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. 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 5. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.
2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by one percent,~~ beginning with the monthly reporting period of January 2013, January 2014, and January 2015.
3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by

subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 6. 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.

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, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 7. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 8. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase annually by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014 and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 9. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one-half of one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment."

Page 2, line 12, remove "who is hired after July 30, 2013"

Page 3, after line 2, insert:

"SECTION 11. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of increases annually by~~ two percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, after line 26, insert:

"SECTION 13. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase ~~of~~ annually by one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.
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."

Page 7, line 30, remove "new hires and"

Page 8, after line 8, insert:

"SECTION 16. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 17. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 18. EFFECTIVE DATE. Sections 3, 10, 12, 14, and 15 of this Act become effective on October 1, 2013.

SECTION 19. EXPIRATION DATE. This Act is effective through July 31, 2017."

Renumber accordingly

2013 SENATE APPROPRIATIONS

HB 1452

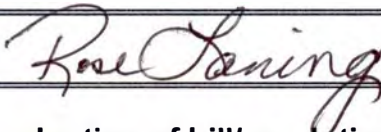
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1452
April 4, 2013
Job # 20875

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and eligibility to participate in the defined contribution retirement plan

Minutes:

Testimony attached # 1 - 2

Legislative Council - Becky J. Keller

OMB - Sheila Peterson

Chairman Holmberg opened the hearing on HB 1452.

Senator Dever, District 32, Chairman of Government and Veteran's Affairs

Testified in favor of HB 1452

SB 2059 sent to House - made contributions to both employee and employer and it failed. They sent us 1452. They amended out the options for existing employees, so the bill came to us to allow the option only for new employees coming into the state.

I have graphs that show the trend with or without the recovery plan, with assumptions based on the percentage of new employees that may opt into the Define Contribution Plan rather than the Define Employee Benefit Plan. When new employees opt to go into the Define Contribution Plan it has a negative effect on the Defined Benefit Plan. We need to take that into consideration unless we adopt it with amendments that came from SB 2059. I don't see any way that we could consider the option for new employees into the Define Contributions.

The other things- we put a sunset on the option of define contributions if 10% of the new employees opt to go with Define Contributions, we can handle that. If more than 50% then we see a downward trend in the unfunded liability or funded liability going forward. There was mistake on the bill when we heard it on the floor the other day, that mistake involved the sunset clause. It was only defined to include the entire bill; it was only intended to include those parts with the defined contribution. I had an amendment drafted 13.0405.03005 (see attached #1). These start with "In lieu of amendments", Page 9, section 17 - there may be interest in another amendment for employees who opted for the defined contributions before. If we allow those employees to come back in to the Defined

Benefit Plan, that would have a positive effect on the fund. The salaries are a little higher than other agencies so their contributions would benefit the plan. The committee in GVA did not make recommendations, as it would be a split vote. I personally would be in support of that.

Senator Carlisle: I have that amendment and when the chairman makes the call I will propose it.

Sparb Collins, Exec. Director, Public Employees Retirement System
PERS board supports 1452 as amended.

Senator Warner: How many amendments is there still one that we haven't seen yet?

Chairman Holmberg: Are you supportive of amendments that we have right now, also the one that we haven't see?

Sparb: In terms of the new employees, the PERS board would be neutral on that as that doesn't have any impact on the fund and so the Board wouldn't have concerns about that. It would be a positive effect on the fund.

Senator Carlisle: I'm handing out amendment 13.0405.03006 - attached #2.

Chairman Holmberg: Becky, if we were to adopt both - no problems? Its' ok.

Sparb: We did have an actuary look at this proposal and if all of the people who were in the Defined Contribution Plan today, came into the Defined Benefit Plan or hybrid plan, the actuarial costs of that was about 14.6% of payroll. As you know, with the bill before you today amended, with the recovery plan, the contributions rates in the defined contribution plan would rise to 16.12% of payroll. With the recovery plan in there, their contributions they would be almost 2% extra in there, so it would be positive to the plan, since it is a higher amount. As long as the recovery plan is part of the bill, otherwise the contributions today are at 12.12, these contributions would be rising, and raising enough for both of them to allow them to come back into plan. Not only would it be not harmful to the plan, but based on these numbers there would be a positive, assuming all of the underlying assumptions are correct.

Chairman Holmberg: where do they work and how many are there?

Sparb: There are 227 people in the Defined Contribution Plan today; this was originally made available to non-classified state employees and that meant that would be elected and appointed official. At the time the program was originally started, WSI was all entirely non-classified so all those employees were eligible to participate. As time went on, WSI now has come back under the classified service so not as many over there are eligible as they were initially; Legislative council is non-classified, the State Mill and Elevator there is a large group of non-classified employees so that's the group that is eligible. The program was started back in 1999, and it's hard to remember back then, but, that was when the markets were going fabulously strong, and this program passed the Legislature. We offered it to the employees who made their asset allocations in September and March when the

tech bubble burst. Then had 2008 and had dramatic downturn. So this has been a very difficult time for people in this system.

Chairman Holmberg 1999, these folks had to sign some kind of irrevocable movement from one system to the other. Is that what happened?

Sparb Yes, they were all given an opportunity to make an election, and a affirmative election had to be made in order to make the switch. We offered it to them in the best of times and turned into the worst of times.

V.Chairman Bowman Why would people have chosen not to belong to the second option like they did to the first option and what advantage was it then versus why are they wanting to get to a different plan today? Do you follow me?

Sparb: When this was offered in 1999, the markets were going up and everything was positive. We lost a sense of what risk was. Many had confidence in the future would be like the last decade and I 'm standing here before you on the Define Benefit Plan because we know that the future was not the same as the past. We went into one of the most difficult financial periods we've had. Last time I was before you I mentioned that out of 228 years of investment returns, the investment consultants state investment board said there are only four worse than what we went through in 2008. For the older member in the system they quite honestly there's not enough time to recover. If you're in the system now at 28-30, I mean you've got investment horizon of 25-30 years. You may be able to come back, but if you're one of those people that made an election, you're just not going to recover.

Senator Gary Lee 1452 would allow those in the Defined Contribution Plan to an election to into the Defined Benefit Plan. Is that correct?

Sparb: 1452 as originally coming over to you from the Senate GVA will allow new state employees after the effective date of this bill, to offer to join the Defined Contribution Plan.

Chairman Holmberg Is that irrevocable? **Sparb** I believe it uses that language, yes.

Senator Gary Lee: The new state employees could elect to be a part of the Defined Contribution Plan going forward if this passes? But the other part of this is, 2059 that says with what the House disposed of, we would allow that contribution to make the Defined Benefit Plan actuarial sound.

Sparb: Let's not forget about 2059, also increased contributions for the Defined Contributions Fund.

Senator Gary Lee The state would put more money in to those plans. **Sparb:** It is split between the employer and the employee. Yes.

Senator Carlisle Handed out amendment 13.0405.03006 (see attached # 2) and would allow another group of employees who signed off to get out of the plan an opportunity to get into the plan. The anomaly is it would have at this point would have a positive impact on the fund. Is that basically where I am at?

Sparb: Yes. If this was added then those that were in as of July 1, 2014 would have a window to come back. Their contributions are going up as well in the Defined Contribution Plan. Just like the Defined Benefit Plan, we know the contribution level of the DC Plan is not producing an adequate benefit.

Senator Carlisle 2059 is in 1452? **Sparb:** Yes, as it's before you today, yes.

Chairman Holmberg If they like 1452 from the committee, would the addition of another amendment weight it down so it could not float? I don't know the answer to that question.

Pam Sharp, OMB. We want to be on record to support all of these amendments. I ask that you look at it from a broader perspective and I know that I have talked to you about rating agencies before. I attempt to get our state to a AAA bond rating. 2059 certainly gets us there with the amendment that Senator Carlisle proposes also is a positive to the fund. The amendment that Senator Dever's committee GVE put on to the bill, regarding the new employees electing to the Defined Contribution Fund with the four year look back is also a positive fund so I think it is just important that we look at all the positives because with the rating agencies are going to be looking at for us is whether we are meeting our Actuarial Required Contribution so all these things get us closer to meeting that ARC which gets us closer to the triple A rating.

Senator Wanzek You said Senator Carlisle's amendment is positive to the Defined Contribution Fund, is that because the dollars which are in the Define Contribution Plan are in ownership of the employee and there would be a large cash transfer of the funds from the Define Contribution Plan into the state Benefits Plan?

Pam Sharp: Yes that is correct. There are two situations all of the assets that are now in the Defined contribution would be deposited into the Define Benefit Plan so there would be a large cash influx. Then in addition, the contributions going forward because these employees have a larger salary than the average state employee, the contributions going into the fund are larger than the average, so it's two-fold.

Senator Wanzek Don't we also acquire the liability of those, the responsible of funding their retirement?

Pam Sharp That is correct, and what has been included into the actuarial report. **Senator Warzek** But it is still positive? **Pam Sharp** Still positive.

Senator Warner Does the money come back in at the current market value, at the level of contribution just fluctuated; went down and then recovered. What is the level that it comes back in at?

Pam Sharp I believe it is the actual value as of that day.

Sparb - The date of transfer.

Senator Warner Are we responsible for liquidating whatever mutual funds or stocks or bonds, and then reallocating the cash derived back into our plan? How does that work?

Sparb: How it would work is we run the defined contributions plan as well as defined benefit plan. It is under our vendor that we use. It is TIAA Kraft. When somebody made the election, we would direct TIAA Kraft to liquidate those funds, and transfer that cash balance to us. We would then just like we do with incoming contributions, we would forward it on to the State Investment Office and they would invest it percent to the allocation that is already established. It's a fairly seamless process, and transfer out into the reverse order.

Senator Gary Lee The Dever amendment is fairly lengthy. What does it do?

Sparb: There was an error in that and was just corrected. The GVA added in 2059 and put expiration date on the Defined Contribution Option of 2017. That was done for a couple of reasons: 1) when someone leaves one and goes to another plan, that has a negative effect on the defined benefit plan because they have one less person, to help pay off the unfunded liability. They take those funds with them. There's an open estimate here. We assumed that there are probably about allowing new employees to do this, at about 10% of them would; if that is the case it just extends our recovery plan by about 4-5 years because of them not being around. But we really don't know to be honest with you, who all is going to elect and if you had more people elect, 100% for example elect out, our plan would go to a zero funded status fairly quickly. So, the four year period allows time for it to be put into place, take a look at it, see what these things are; and it takes that cost down from what it would have been 1% of payroll to 2% payroll.

Senator Gary Lee Is that what the Dever amendment does?

Sparb: Yes, His amendment corrects the error on the expiration date.

Senator Wanzek Senator Carlisle's amendment and the net impact is positive to the Defined Benefit Plan. Can one extrapolate from that that those individuals collectively in the Defined Contribution Plan did better than they would have in the Defined Benefit Plan? In other words, you're saying all their assets. When you look at their assets, their net effect of the assets and the liability actually is positive.

Sparb: Not entirely accurate. It's not just the assets that come over that makes it okay. It's the assets coming over and the increased contributions that would come from those people in the future, That increase contributions that is coming from them, would be what's in the recovery Plan because the contribution level is going up for everybody at that level; the DV and the DC. These folks have a salary of \$75,000-80,000, our average salary in the system is generally about \$30,000. That is just by the nature of who they are.

Senator Gary Lee This makes no sense anymore. If new bill allows new employees to come into the Defined Contribution Plan and then you add an amendment 2059 that allows us to add dollars to the defined Benefit Plan and the Dever amendments says that they can't contribute anymore or move to the Defined Contribution Plan after 2017, and then Carlisle amendments says that the Defined Benefit people want to get out of the Defined contribution Plan, this thing just doesn't make any sense anymore. I think that we confused the whole issue in terms of what is trying to be done.

Sparb: It does come together. **1st**, there are those that feel and that was reflected in the original 1452 that there should be a Defined Contribution option for new state employees. This bill does that. **2nd**, in 2059 we had the recovery plan that defined benefit plan, needs to be shored up. The amendment that you have before you does that; so it accomplishes those two goals. Then is the **3rd** issue out here, is there are those people who elected the DC plan in the past that would like to have the opportunity to come back and this does that. They only get a one- time election and then it's done. So you have three things going on here: 1) setting up if for the future for the DC option 2) getting the Define Benefit Plan back, getting the recovery portion in it 3) would allow those people a one-time option who are there in the past. There is an awful lot of things going on.

Chairman Holmberg Could you put together for the committee a chart with the Dever amendment and what it does, the Carlisle amendment; and then another amendment. Philosophically there are interesting points. We like tables.

V.Chairman Grindberg Assume these amendments and bill passes and we head into the first year of the new biennium. There is a number of employees, that start with the state and they choose Define Contribution, could potentially we have another issue when we come back here in 2015, that they want to change their mind and then they want to switch.

Sparb: The newer group would not be entering the system when it goes through there is such dramatic financial consequences that occurred. That is the issue with the other one.

V.Chairman Grindberg The market is at all-time records. How can we say that the people and the funds when they entered into the system certainly the value that they own in the fund is down but today it's got to be at least where they were at.

Sparb If you had \$10 and the market corrected by 50%, your value went down \$5. Now the market corrected to 50% and took you up to 7.50, your still \$2.50 behind. What you need is if you go down 50, you need 100% to get back and were returning to where we were but we're not returning.

V.Chairman Grindberg So can we assume these individuals are making conscious decisions on their portfolio mix and their level of risk as a member of the Defined Contribution Fund? **Sparb** yes. **V. Chairman Grindberg** There has been personal responsibility with some decisions that they picked less of stock or CD's. Some of that is their own doing? **Sparb** When you go into Defined Contribution Plan, you are responsible for setting your asset allocation.

V.Chairman Grindberg In essence we're as a state, with this amendment allowing them the forgiving their choices what they made or where they wanted their money invested. Certainly that would be a potential possibility.

Sparb It gives them an opportunity to come back with the fund.

Chairman Holmberg One of the arguments that would be utilized, on the floor, no matter where we are, is this last amendment really muddies the water from the standpoint of our we giving people a one- time election.

Senator Robinson: It might be viewed as a precedent. We've done it once, why wouldn't we do it again. Number 2, I think a lot of folks, unintentionally don't give this issue a whole lot of thought when they take a job. They are happy to get a job, they sign their contract, and they go forward and then they look back at some point down the road. But I think at a minimum, given this experience we've had with the Defined Contribution, may be there should be a historical perspective of what happened over the last 15 years or so, to better inform some of these folks who elect, to go down that road what their ramifications might be. It just seems that information would be helpful.

Sparb: When this was originally offered in 1999, 38% switched over. In the last 5 years, about 7.5% switched over. If you look at the last 10 years it was about 15% so, you can see a little of the interest over time on it. When markets were doing great it was about that 38%, it's kind of gone down. Not so say that when markets improve you might, it might be little bit of a draw, but that gives you a bit of a perspective.

Chairman Holmberg Making a change in good times as in 1999 would be interesting but, times are not always good and I have to declare a conflict because some years ago, my sister made a selection non-revocable and Dave Thompson is here so he would know what I am going to say. If you ever listened to the Magic Flute that Queen of the Night Aria, you know how my sister is every time this comes up, so that is my conflict. Dave Thompson knows exactly what I am talking about.

V.Chairman Bowman "Those people that feel" who were you talking about?

Sparb The people who elected to join the Defined Contribution Plan. That's who I have been referring too. I will put that together and have it ready for tomorrow.

Chairman Holmberg Thank you so we can have a walk about through that graph.

Stuart Savekoul, Executive Director of the ND Public Employees Retirement System. I had the opportunity to testify on this bill three times, because we've had it in front of Employee Benefits and then of course the House and now the Senate GVA. Up to this point we've testified in opposition to the bill every time. Those folks that made that election back in 1999, have regretted it. This isn't the first time the ND Legislature has considered something like this. In the 1980's employees were given a similar option to opt into a Defined Contribution Plan and so great was their remorse, that by 1985 or 1987, Rep. Martinson sponsored a bill that allowed them to opt back into the plans. So, there is in fact a precedent for when times allow and when it works for the fund to let folks back in. We like that the Senate is making another effort to revive 2059. I am happy that it doesn't require a great deal of persuasion for the folks in the Senate to understanding importance of 2059 and the impact it will have on our employees and their retirement fund. Regarding Senator Carlisle's amendment that has been sort of the subject of most of this debate today I think that you folks are in a unique opportunity to really help some employees opt back into the plan but for those who opt back in your giving them the opportunity to have a secure retirement and actually improve the status of the fund. It's virtually a win, the fund wins, and those individuals are able to retire and our association while there still very uncomfortable with the fact that there could be as many as 10% or who knows how many

folks would in the future opt into the Define Contribution Plan. We believe that the bill now is complicated as Senator Lee mentioned but in our estimation the goods outweigh the bad; perhaps there is a little something for everyone in this bill that will allow it to clear both chambers at the conference committee. I ask for your support of the bill and the amendments.

Josh Askvig, ND AARP I don't know where we're at technically on this bill other than to say that we like, 2059, which was rolled in, but our concerns to us has to do with the defined contributions. I think Senator Lee alluded to it, earlier as to why would we give people the option to choose a worse plan. So, we really don't like the optional DC piece and we testified against from the beginning, we still don't like the optional DC piece, and have a lot of stats that I list for you other than to say, if you really want to make it a really good bill you would take that piece out and probably add the Carlisle amendment and then it would be a really good bill.

Chairman Holmberg It might be a really good bill for the Senate passage, but it might not be as good for the House. We're trying to put together a boat that will float on both sides of the aisle.

Chairman Holmberg closed the hearing on HB 1452.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1452
April 5, 2013
No audio available

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and eligibility to participate in the defined contribution retirement plan.

Minutes:

Chairman Holmberg opened the discussion on HB 1452 and said that Senator Dever came in with a correction from his committee.

Senator Carlisle moved Do Pass on amendment 13.0405.03005.

Senator O'Connell seconded the motion.

Voice vote carried - amendment adopted.

Senator Carlisle moved Do Pass on amendment 13.0405.03006.

Senator O'Connell seconded the motion.

Voice vote - amendment failed.

Senator Carlisle moved Do Pass as Amended with the Dever amendments (.03005) correction on the dates.

Senator Krebsbach seconded the motion.

A roll call vote was taken. Yea: 11 Nay: 2 Absent: 0

The bill goes back to the Government and Veterans Affairs committee and Senator Dever will carry the bill on the floor.

FISCAL NOTE
Requested by Legislative Council
04/01/2013

Amendment to: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$6,183,400	\$5,409,300	\$12,366,800	\$10,809,600
Appropriations	\$0	\$0	\$6,183,400	\$5,409,300	\$12,366,800	\$10,809,600

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$3,206,350	\$6,407,450
Cities	\$0	\$1,627,250	\$3,251,850
School Districts	\$0	\$3,045,100	\$6,085,100
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill adjusts the employer and employee contributions to the state retirement plans to implement the last two years of the four year recovery plan and to offer an optional defined contribution plan to new state employees.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill increases member and employer contributions for the NDPERS Main (Section 4,5,6), Judges (Section 7), Highway Patrol (Section 1 & 2), and Defined Contribution (Section 11 & 13) systems by 1% each in January of 2014 and 2015. The Law Enforcement Plans (Section 9) and National Guard Plan (Section 8), increase by 1/2% for the member over the same period of time. The bill is to implement the last two years of the recovery plan and offer the optional defined contribution plan. Section 17 provides a \$22,000 appropriation to the Public Employees Retirement System for implementation of the provisions of this bill.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

See 2B above.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

See 2B above, the appropriation is included in the executive budget.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

FISCAL NOTE
Requested by Legislative Council
02/12/2013

Amendment to: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$6,028,000	\$5,278,500	\$6,028,000	\$5,278,500
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$2,792,500	\$2,792,500
Cities	\$0	\$1,197,500	\$1,197,500
School Districts	\$0	\$2,986,500	\$2,986,500
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide NEW State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 10% of the new members would elect to transfer (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.06% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$18.3 million. Over the last 10 years about 16% of newly hired nonclassified employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8% . Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. If we assumed that the number making this election to transfer was annually 5% of the new hires, then the main hybrid plan contributions would need to increase by .58% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$10.0 million. Alternatively, if we assume that 15% of the new hires, then contributions would need to increase by 1.57% in the Main/Hybrid Plan. This would have a total biennium cost of \$27.0 million. As illustrated, the cost varies substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgate pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$22,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.06%, assuming 10% of the new hires transfer, or .58%, assuming 5% of the new hires transfer, or 1.57% if 15% of the new hires transfer. Contribution requirements for the other smaller systems would need to change as well. At the level of 10% of the new hires, the Judges contribution would need to go up by 1.07%, the law enforcement contribution would need to go up .52% and National Guard would need to go up .34%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$9,440,000	\$8,352,000	\$9,440,000	\$8,352,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$4,368,000	\$4,368,000
Cities	\$0	\$1,873,000	\$1,873,000
School Districts	\$0	\$4,672,000	\$4,672,000
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow existing and new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 15% of the existing members would elect to transfer and 10% of newly hired employees annually thereafter (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.66% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$28.6 million. When this option was originally offered to non-classified state employees in 1999, 38% elected to transfer. Over the last 10 years about 16% of newly hired employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8%. The above projections use a lower election rate for existing employees due to the current economic conditions. Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. The second area contributing to the actuarial effect is that existing employees are allowed to transfer the full present value of their accrued benefit. This would result in a transfer of assets greater than the assets that currently support the benefit, causing the plan to take a loss for each member transferring that would need to be paid by increased contributions from those remaining. If this provision was modified to make it present value less unfunded liability it would reduce the cost for the main hybrid plan. If we assumed that the number making this election to transfer was annually 10% of the existing members and 5% of the new hires, then the main hybrid plan contributions would need to increase by .95% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$16.4 million. Alternatively, if we assume that 20% of the existing members elect to transfer and 15% of the new hires then contributions would need to increase by 2.42% in the Main/Hybrid Plan. This would have a total biennium cost of \$41.7 million. As illustrated, the cost varies

substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgate pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$106,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.66%, assuming 15% of the existing members transfer and 10% of the new hires, or .95%, assuming 10% of the existing members transfer and 5% of the new hires, or 2.42% if 20% of the existing members transfer and 15% of the new hires. Contribution requirements for the other smaller system would need to change as well. At the level of 15% of the existing members and 10% of the new hires, the Judges contribution would need to go up by 1.64%, the law enforcement contribution would need to go up .76% and National Guard would need to go up .46%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

April 3, 2013

1049
4/5/13
TWS

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

In lieu of the amendments adopted by the Senate as printed on pages 988-995 of the Senate Journal, Engrossed House Bill No. 1452 is amended as follows:

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, remove the second comma

Page 1, line 2, replace "54-52.6-15" with "54-52.6-09"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and to repeal section 54-52.6-03 of the"

Page 1, remove line 4

Page 1, line 5, replace "public employees retirement system" with "to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional~~ increase ~~of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015.
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been

paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015.~~ If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1."

Page 1, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional~~ increases annually by two percent increase, beginning with the reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. 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 5. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.
2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and ~~with an additional~~ increase of annually by one percent,

beginning with the monthly reporting period of January 2013, January 2014, and January 2015.

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 6. 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.

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, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 7. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually~~ by one percent, beginning with the monthly reporting period of January 2013, January

2014, and January 2015. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 8. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase annually by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014 and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 9. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one-half of one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment."

Page 2, line 12, replace "is hired after July 30, 2013" with "elects to participate in the retirement plan under this chapter"

Page 3, after line 2, insert:

"SECTION 11. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of increases annually by~~ two percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, remove lines 27 through 31

Page 8, replace lines 1 through 8 with:

"SECTION 13. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase ~~of~~ annually by one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.
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 14. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall

consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits programs committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 15. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 16. EFFECTIVE DATE. Sections 3, 10, and 12 of this Act become effective on October 1, 2013.

SECTION 17. EXPIRATION DATE - SUSPENSION. Sections 3, 10, and 12 of this Act are effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03, as it existed on September 30, 2013, becomes effective on August 1, 2017."

Renumber accordingly

Date: 4-5-13Roll Call Vote # 12013 SENATE STANDING COMMITTEE
ROLL CALL VOTESBILL/RESOLUTION NO. 1452Senate Appropriations Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number # 13.0405.03005

Action Taken

☐ Adopt Amendment☐ Do Pass☐ Do Pass as Amended☐ Do Not PassMotion Made By Carlisle Seconded By O'Connell

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg			Senator Tim Mathern		
Co-Vice Chairman Bill Bowman			Senator David O'Connell		
Co-Vice Chair Tony Grindberg			Senator Larry Robinson		
Senator Ralph Kilzer			Senator John Warner		
Senator Karen Krebsbach					
Senator Robert Erbele					
Senator Terry Wanzek					
Senator Ron Carlisle					
Senator Gary Lee					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice
Vote
Carried.

Date: 4-5-13

Roll Call Vote # 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1452

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number H 13.0405.03006 *(Carlisle Amendment)*

Action Taken ☐ Adopt Amendment ☐ Do Pass
☐ Do Pass as Amended ☐ Do Not Pass

Motion Made By Carlisle Seconded By O'Connell

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg			Senator Tim Mathern		
Co-Vice Chairman Bill Bowman			Senator David O'Connell		
Co-Vice Chair Tony Grindberg			Senator Larry Robinson		
Senator Ralph Kilzer			Senator John Warner		
Senator Karen Krebsbach					
Senator Robert Erbele					
Senator Terry Wanzek					
Senator Ron Carlisle					
Senator Gary Lee					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Unanimous
& Failed*

Date: 4-5-13Roll Call Vote # 3

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 1452Senate Appropriations Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number Dever Amend 03005

Action Taken ☐ Adopt Amendment ☐ Do Pass
☒ Do Pass as Amended ☐ Do Not Pass

Motion Made By Carlisle Seconded By Krebsbach

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	<input checked="" type="checkbox"/>		Senator Tim Mathern	<input checked="" type="checkbox"/>	
Co-Vice Chairman Bill Bowman	<input checked="" type="checkbox"/>		Senator David O'Connell	<input checked="" type="checkbox"/>	
Co-Vice Chair Tony Grindberg	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Senator Larry Robinson	<input checked="" type="checkbox"/>	
Senator Ralph Kilzer	<input checked="" type="checkbox"/>		Senator John Warner	<input checked="" type="checkbox"/>	
Senator Karen Krebsbach	<input checked="" type="checkbox"/>				
Senator Robert Erbele	<input checked="" type="checkbox"/>				
Senator Terry Wanzek	<input checked="" type="checkbox"/>				
Senator Ron Carlisle	<input checked="" type="checkbox"/>				
Senator Gary Lee	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			

Total (Yes) 11 No 2Absent 0Floor Assignment 2 V.A. Dever

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1452, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1452, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on pages 988-995 of the Senate Journal, Engrossed House Bill No. 1452 is amended as follows:

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, remove the second comma

Page 1, line 2, replace "54-52.6-15" with "54-52.6-09"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and to repeal section 54-52.6-03 of the"

Page 1, remove line 4

Page 1, line 5, replace "public employees retirement system" with "to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January ~~2013, January 2014, and January 2015.~~
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code

and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of ~~annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1."

Page 1, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and

receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase annually by two percent increase~~, beginning with the reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. 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 5. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.
2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015.
3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 6. 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.

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, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, ~~January 2014, and January 2015~~. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 7. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 8. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase annually by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014 and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 9. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one-half of one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment."

Page 2, line 12, replace "is hired after July 30, 2013" with "elects to participate in the retirement plan under this chapter"

Page 3, after line 2, insert:

"SECTION 11. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of increases annually by~~ two percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, remove lines 27 through 31

Page 8, replace lines 1 through 8 with:

"SECTION 13. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and ~~with an additional~~ increase ~~of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase ~~of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.
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 14. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits programs committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 15. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 16. EFFECTIVE DATE. Sections 3, 10, and 12 of this Act become effective on October 1, 2013.

SECTION 17. EXPIRATION DATE - SUSPENSION. Sections 3, 10, and 12 of this Act are effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03, as it existed on September 30, 2013, becomes effective on August 1, 2017."

Renumber accordingly

April 3, 2013

/

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

In lieu of the amendments adopted by the Senate as printed on pages 988-995 of the Senate Journal, Engrossed House Bill No. 1452 is amended as follows:

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, remove the second comma

Page 1, line 2, replace "54-52.6-15" with "54-52.6-09"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and to repeal section 54-52.6-03 of the"

Page 1, remove line 4

Page 1, line 5, replace "public employees retirement system" with "to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional~~ increase ~~of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015.
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been

paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1."

Page 1, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase annually by~~ two percent increase, beginning with the reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. 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 5. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.
2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent,

beginning with the monthly reporting period of January 2013, January 2014, and January 2015.

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.
4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 6. 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.

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, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 7. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January

2014, and January 2015. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 8. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase annually by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014 and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 9. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one-half of one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment."

Page 2, line 12, replace "is hired after July 30, 2013" with "elects to participate in the retirement plan under this chapter"

Page 3, after line 2, insert:

"SECTION 11. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ increases annually by two percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, after line 26, insert:

"SECTION 13. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015.

2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase ~~of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.
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."

Page 7, remove lines 27 through 31

Page 8, replace lines 1 through 8 with:

"SECTION 14. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall

consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 15. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 16. EFFECTIVE DATE. Sections 3, 10, and 12 of this Act become effective on October 1, 2013.

SECTION 17. EXPIRATION DATE - SUSPENSION. Sections 3, 10, and 12 of this Act are effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03 as it existed on September 30, 2013, becomes effective on August 1, 2017."

Renumber accordingly

2013 CONFERENCE COMMITTEE

HB 1452

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1452
April 17, 2013
21194

☒ Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to eligibility to participate in the defined contribution retirement plan; relating to calculation of accumulated fund balances under the public employees retirement system

Minutes:

Attachments 1-2

Vice Chair Randy Boehning opened the conference committee on HB 1452.

Senator Dever It is my understanding that the PERS plan came into existence in the 1970s. It was set up as a defined benefit plan. That was a commitment that the state made at that time. In 2001 it was 104% funded. At that time the contribution rates were 4% on the employee side, 4% on the employer side for a total of 8%, and the state as the employer paid both sides. The state has always made its contributions unlike some other states. The plan is well managed. In 2008 there was a big hit out of the pension plan. In 2011 PERS brought to the legislature a recovery plan that would increase both sides by 4 points over the next two biennium. The House passed that and sent it to the Senate. The Senate said do the first two years and then take a look at where we are at. That is kind of where we are at. SB 2059 came to us from PERS, went through employee benefits program committee, received favorable recommendation, passed the Senate, went to the House, and in an apparent reversal of its previous position, the House killed SB 2059. 1452 came from the House and was introduced to provide the option of defined contribution plan to new employees and to also existing employees. The House took out the provision for the existing employees. We saw the need to continue the recovery plan. We still see that need. I have some graphs to hand out. **Attachments 1&2.** If we adopted 1452 and did not amend into it, the plan is in big trouble. I understand that the House has a serious interest in consideration of defined contribution plan, so we included in this bill and 2059 a study in the coming interim, and the study would be done by a committee other than employee benefits program committee. New employees that go into the defined contribution plan as it stands right now would receive the benefit of any increase in the contributions that the state makes in support of the recovery plan in the defined benefit. The 4 and 4 that existed previous to the need for the recovery plan seems to me what is necessary to maintain the plan. We may want to discuss the point with any members that adopt to go into defined contributions, that anything over that 8% should go into the recovery plan for the defined benefits. We could accomplish that either by designating that enhanced contribution go to the defined benefit plan or to cap the contributions at 4 and 4.

Vice Chair Randy Boehning You would be shortchanging the employees under the defined contribution plan?

Senator Dever I don't know how you would be shortchanging them if the amount over that is designated for recovery. All the different colored lines on the graph head to recovery until we get above about 50% of new hires opting for defined contribution. The reason I mentioned that the state made this commitment to the defined benefit back in the 70s is because there is that group of unclassified employees asking for the option of going back into the defined benefits. The response they received from the legislature is that once you make that commitment, you are committed to that. We as a state committed to that defined benefit plan and we can't just walk away from it.

Vice Chair Randy Boehning If we would wait two more years to see where recovery is at, where is our fund standing at currently?

Sparb Collins, Executive Director of PERS, appeared. We are at around 68%. If you wait two more years, that would be about \$30 million in contributions, both employer and employee, that we wouldn't receive during the two year period. If you were to take that forward during the recovery period with a projection of about 8%, that means we would lose about \$260 million in investment income over that period. Overall, we would be out about \$300 million toward the recovery during that time period. The bigger part you lose is the investment income off of that. Since 1977 the PERS plan has received about \$1 billion in employer and employee contributions as of the last actuarial evaluation. As of the last actuarial evaluation, we had about \$1.7 billion in assets. We still had every single dollar that had ever been given to us plus 50 or 60% more. In addition to it, we had brought into North Dakota \$1 billion worth of money through the investment returns that were used to pay our members. That becomes the critical variable. In 2009 when the market started to take a downturn, we had come to the legislature and suggested increasing the contributions at that time to the actuarially required contribution rate which would have been an increase of about three percent then. Of course, at that time decided to wait and see how that market downturn turned out. If in fact that had been done at that time, we would be at about a 72% funded status today.

Vice Chair Randy Boehning When were these graphs drawn up? You were talking about 68% and this shows under 65.

Sparb Collins I would have to go back and check on the exact rates. I was estimating around 65 or 68%. Our long term projection without any increase is that our funding status will kind of stay at that range and gradually over the 30 year period drop to somewhere around 58% assuming we make an 8% return every single year.

Rep. Scott Louser In interim when we had our final report, it was around 64%. What was the return for the first quarter of this year?

Sparb Collins I don't have that. This morning I received the return on our year to date, and our year begins July 1. We are a little over 12%.

Senator Dever We calculate that funded status on a five year rolling average and the coming year will be the first one that 2008 will drop out of?

Sparb Collins I would have to double check. He referred to the graph without recovery plan. The House didn't fund 1452. It added the benefit for employees but didn't fund it. As employees elect to take it, we end up with one less contribution to paying off the unfunded liability. As it is presently packaged, it is fully actuarially paid for. You are just offsetting the recovery by a couple years to pay for that. As it came out of the House, it wasn't actuarially paid for.

Vice Chair Randy Boehning Could you get us up to date graphs?

Sparb Collins I will talk to our actuary. This year is pretty well fluctuating. We can build in what the funded status would be for you and say what if this year we ended up with a 8% return, what would be our funded status, at 9%, 7%, etc. We could do a table with those. The key is the long term direction.

Rep. Scott Louser If my numbers are correct, the last interim committee report we had, this fund was returning between 0 and 1%. If we are at 12 now and we were at 64 funded then and 68 now, that tells me that somewhere between December and this month, we have had a real strong return. If we were looking in 2009 when the market was down to increase contributions, we are doing the opposite right now. It is key to know what has happened this first quarter this year.

Sparb Collins We did also go ask the actuary what if it was elected not to increase contributions, what would be the long term rate of return we would need to get on average each and every year to get it back to 100%? They said 9.3%. I went to our investment consultant and asked what type of investment strategy would we have to put into place to try and capture a 9.3% return? One of your basic rules in investing is diversification. We would probably have to throw that out the window. We would have to move everything over into equities. A large percentage if not all of that would potentially have to go into alternative investments. I asked what would have happened if we had an asset allocation like that during the market downturn when everything went bad? We lost about 26% when everything went bad. If we would have had an asset allocation that had been invested in a strategy like this, we would have lost roughly 40%. In order to capture that 9.3, we have to go to risky investments.

Senator Krebsbach Where were we two years ago?

Sparb Collins I don't recall exactly, but it was higher.

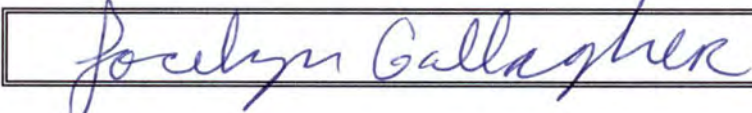
Senator Dever A couple weeks ago I read an article in Governing Daily about states that have done what is necessary to improve the status of their DB pension plans. It said three things. They increased the retirement age. I think that would have little effect in North Dakota, because employees are delaying their retirement because of health insurance. They removed COLAs from their plan, and we don't have COLAs. They increased their contribution rates, and that is what we are looking at doing here. **Vice Chair Randy Boehning** adjourned the meeting.

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1452
April 17, 2013 (PM)
Job 21226

☒ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to eligibility to participate in the defined contribution retirement plan; relating to calculation of accumulated fund balances under the public employees retirement system

Minutes:

Attachment 1

Vice Chair Randy Boehning opened the conference committee on HB 1452.

Sparb Collins, Executive Director, PERS, handed out and explained Attachment 1.

Vice Chair Randy Boehning (3:41) This one does not have the extra 2 and 2, correct?

Sparb Collins Correct

Vice Chair Randy Boehning What would happen if a guy had a fund set up and do a one-time funding into this?

Sparb Collins At this term's contributions those contributions need to rise. When you talk about how you going to fund it, when it is done off of covered payroll, it brings in the funds at equal representation as the participation.

Vice Chair Randy Boehning What is the total going into the fund and going out currently?

Sparb Collins I would have to get that.

Vice Chair Randy Boehning Is there more money coming in? Along with the interest, it is still growing, correct?

Sparb Collins In an average year it's growing. Overall, we pay out \$80 million in the state of North Dakota.

Rep. Scott Louser What happened in 2009?

Sparb Collins (8:27) Explained what happened in 2009.

Senator Nelson (11:21) My question of for Pam. We had a bill in Judiciary that came over and it would have provided for a fund at the end of the road but nothing up front. The chart handed out showed if we went to the recovery stage, the state would not be on the hook for anything. But we would still on the hook for a large amount but the biggest problem we had was a problem with the state's bond rating. Would you like to talk about that?

Pam Sharp, Director of OMB: The bill you are talking about is HCR 3003 which is now 4010. That would have set aside a pot of money and the intent was to just keep the money until several years out as the unfunded liability continued to increase. The rating agencies would see that as being irresponsible and not look favorably upon that at all because we would acknowledging that we have an unfunded liability and be doing nothing to fix it. By letting the unfunded liability grow over a course of years they want to see up making progress. They have been vocal about that. .

Senator Krebsbach (13:28) With the recovery plan that would get us to where we need to be to get our bond rating increased?

Pam Sharp That is correct. The recovery plan gets us on the right path.

Senator Krebsbach We are fortunate and with our plan we have not succumbed to having COLAs included.

Senator Dever Haven't heard from the House at all.

Vice Chair Randy Boehning We don't want to do the 2 and 2 on this. Local subdivisions have to come up with another \$9 million or split it out with their employees. This will raise property taxes as well.

Senator Krebsbach I don't see where this is affecting property tax.

Vice Chair Randy Boehning I think is a large hit to the local subdivisions as well so that will have to come from property tax.

Senator Dever By increasing the contribution rate we are asking the members step forward and make the necessary adjustments to make the plan whole. To not do that puts the plan in jeopardy. I think that is what is problematic.

Senator Nelson Three year ago those same people brought this recovery plan to us. It was us who split it up into two and two.

Senator Dever Without the recovery plan it seems to be insanity. We're looking at the plan going sharply downhill. I think the amendments discussed this morning would address the portion for those who opt for the defined contribution.

Senator Nelson (19:52) We defeated the bill that dealt with the plan. Part of the reason is there is a study in this bill that says let's look and see what might happen if we moved to DC plan. What is the sensible process to do that? There has to be a system in place. The reason we didn't pass that resolution was the study hadn't been done yet.

Senator Dever I wonder if it might be beneficial if the house either to share with us the rational of the house. I think the two issues are butting up against each other.

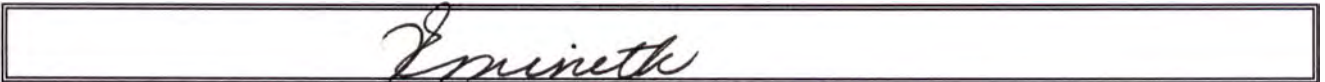
Vice Chair Randy Boehning: We will adjourn and reschedule.

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1452
April 19, 2013
21308

☒ Conference Committee



Relating to eligibility to participate in the defined contribution retirement plan; relating to calculation of accumulated fund balances under the public employees retirement system

Minutes:

"attached testimony."

Vice Chair Randy Boehning opened the conference committee meeting on HB 1452. Senator Schaible was substituting for Senator Nelson.

Senator Dever apologized for not making it to the meeting scheduled for April 18.

Vice Chair Randy Boehning Leave the bill as it was.

Senator Dever: The drafts I handed out shows that there is no way that will work.

Vice Chair Randy Boehning: With the market going the way it is that could back in a couple of years we could come back in a couple years and revisit this.

Senator Krebsbach: We have the ability to put money in now to bring this fund back into position where it needs to be rather than push it down the road. Look at TFFR has done and where they are headed they did the 4 year recovery we did a 2 year. If we can shore this up we will save the state a lot more money. Pam Sharp, OMB, we can come with a good plan in dealing with this fund we can increase our bond rating for our state.

Rep. Scott Louser: When ended the employee benefits committee in the interim I thought we were 64% funded but it is about 68%. Timing was impeccable the house's position was that perhaps this fund is correcting itself of itself.

The talked about the employers paying both sides and the employer is the tax payer. We have changed the multiplier, manipulate rule of 85, we are trying to deal with a system here that is an annuity.

In 2009 we were considering investing more money as the market was down and if we did that we would be up around 71 or 72%. Now we are buying high and this bill does not have a reversion so when we hit as TFFR does it doesn't revert back. I look at this as putting more fuel into a broken vehicle.

Senator Dever: I have been offered an amendment to include the same provision as in TFFR so that is not a barrier in my position. The reason that we were able to manipulate the rule of 85 is because the different parties came together and agreed to do that. The decisions on issue are going to come with some direction from leadership from both sides.

Vice Chair Randy Boehning: I agree we need to hear from the leadership.

Senator Dever: The taxpayer is paying employer side of that and that is part of the compensation package. The concern I have with the combined contributions is that the employers contributing to that individual pension plan and not to the defined benefit.

Vice Chair Randy Boehning: MDU did that sometime ago and cut it off at a certain date and went to the defined contribution and they are funding that.

Senator Dever: May have been part of a riff.

Rep. Scott Louser: We have heard about the bond rating and I am not certain as to what elements go into a bond rating. I don't think there is a guarantee that if we have the intent to fix this; that it will go to AAA.

Senator Dever: Could Pam Sharp speak to that.

Pam Sharp: OMB, I had several conversations with S&P and Moody's and S&P expressed to the governor and I that the only criteria that is holding North Dakota back from the AAA bond rating is how we deal with the unfunded pension.

Vice Chair Randy Boehning: Would you get us that document? We had a constitutional amendment that would put money in a constitutional fund would that be something that they would approve as well?

Pam Sharp: I do not believe they would look favorably upon that plan because in 4010 that would increase our unfunded liability from 800 hundred million to about 6 billion by the time there would be enough money from the time that money would be used for this plan because we would be increasing that.

Vice Chair Randy Boehning: But with the amount of money we would be putting in and the interest wouldn't that make up that difference as well?

Pam Sharp: in 4010 that money does not go directly into the PERS retirement plan it goes directly into a separate fund that is not attached to the plan so it would take legislative action to put into the plan and that money would not I can't remember how the money builds up but the unfunded liability would continue to increase for several years.

Rep. Scott Louser: I asked for that map of the United States: aren't there 12 -15 states that have a higher bond rating than North Dakota?

Pam Sharp: That is correct there are about 13 states with the AAA bond rating.

Rep. Scott Louser: What element besides the pension fund determines the AAA bond rating?

Pam Sharp: It is a very complicated I can't rattle them off it is a board spectrum of things that they look at.

Senator Krebsbach: The only thing they singled out was the unfunded portion of our liability in the retirement.

Pam Sharp: That is correct.

Rep. Scott Louser: That is what intrigues me is that we believe that and everybody around the country knows that and yet there are 13 states that are rated higher than us. This doesn't make sense to me.

Rep. Steven Zaiser: Any of these criteria weighted?

Pam Sharp: I don't know how they weight them I can get some criteria from one of the bond rating agencies.

Senator Dever: Would it be easier to understand this issue if we think in long terms because the pension is a long term proposition and so are the bonds.

Vice Chair Randy Boehning: States that have addressed their unfunded liability in the right way have done three things; they have raised the retirement age, they have eliminated colas which we don't have and they have adjusted the contribution. Can you get us the correspondence from S&P?

Pam Sharp: I can get the most recent rational which they reaffirm the states rating in March.

Vice Chair Randy Boehning: How many states have a defined benefit plan?

Sparb Collins: Public Employees Retirement System; I don't know the exact number I can tell you a couple that have a defined contribution; Alaska, Florida, and Michigan I will see what I can pull together.

Pam Sharp: OMB; I have some information of the 13 states that have AAA bond ratings. All of those 13 states have a defined benefit plan and about 10 of them have a component of a defined contribution plan which is what ND has.

Vice Chair Randy Boehning: Meeting was adjourned.

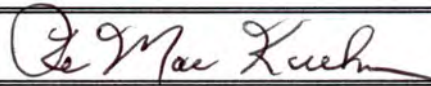
2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1452
April 22, 2013
Job #21394

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to eligibility to participate in the defined contribution retirement plan; relating to calculation of accumulated fund balances under the public employees retirement system

Minutes:

Attachment 1-4

Chair Randy Boehning: opened the conference committee on HB 1452. I do have some amendments to submit.

Sparb Collins, Public Employees Retirement System: HCR 3003 showed that funding going into that until 2046 would be about \$2+ billion in contributions at 2% would grow to about \$3 billion. If the returns are higher we rated them at 2, 4, 6, 8%. At 8% it would be around \$13 billion in the stabilization fund. The way the constitutional amendment was set up is that the treasurer would be limited on diversifying the investment and therefore would have a lower return.

Chair Randy Boehning: It is short term, low risk.

Senator Dever: I am not prepared to discuss HCR 3003 or now 4010 which has become that. It bypassed the entire process and never received any actuarial review in the interim.

Chair Randy Boehning: We are working on amendments for 4010.

Senator Dever: Attachment 1 was read. (5:10-7:04) If you are a new employee considering which plan to go into, the defined contribution is now 7 and 7 with the state paying 4 of the employee's side. So the state is paying 11% and the employee is paying 3%. If that is the case throughout an entire career, because it is an irreversible decision, that is pretty attractive. If the plan reaches 100% and we drop everything including the defined contribution side, then we are expecting the employee to make a commitment permanently.

Options to deal with that: (Continuing 7:52-9:10)

1. Start the program at lower contribution rates that are going to continue in the life of their plan.

2. We could apply the amounts over the maintenance level of the plan to the recovery on the Defined Benefit side.
3. Applying the employer side of the contribution over the maintenance level to the recovery on the Defined Benefit side so it is not going into the defined contribution plan.

The unclassified employees who previously opted into the Defined Contributions plan would like to return to Defined Benefits. Their return would have a positive impact on the Defined Benefit plan. Should we give that consideration?

I think we need to recognize that what we do in this bill has long term implications.

Chair Randy Boehning: On your last point with the unclassified on the defined contributions getting back to defined benefits, if their plan went south and what should be at \$50,000 is at \$30,000. Who makes it whole?

Senator Dever: Whatever they have in their defined contribution plan would transfer to the DB plan. The benefit is it has a positive impact on the plan because their salaries are above the average of other state employees. So the contribution going into the plan would be higher.

(10:34)

Chair Randy Boehning: If they should be at \$50,000 and the funds in their account are \$30,000, who makes up the \$20,000?

Senator Dever: The \$20,000 is made up in their higher contributions going forward.

Chair Randy Boehning: Bonus of \$20,000?

Senator Dever: You can call it a bonus if you want. We are talking about recovering after their investments went south.

Pam Sharp, OMB, appeared.

Rep. Scott Louser: How do you determine the retirement age for defined benefit if you roll into that plan? There is no retirement age on a defined contribution.

Pam Sharp: That would go back to the same rule for every other state employee which is the rule of 85. Someone in the defined contribution should be at \$50,000 and maybe they are at \$30,000. I think there would be some that maybe are over and some maybe under. Generally altogether the performance of those plans would be similar to the DB plan since they experience the same things in the market.

Chair Randy Boehning: That would be a concern for other state employees. Their plans went way off and now they are coming back in and are getting a bonus.

Pam Sharp: The performance is very similar to the PERS pension fund.

Rep. Scott Louser: At what point would the lower contribution percentage be? Have you thought about what those contribution rates will be?

Senator Dever: I have not. I wanted to leave it open for conversation. We could say go back to the 4 and 4. Another consideration is that when we began the recovery plan those under defined contributions went up with that. So they are now at 6 and 6.

Chair Randy Boehning: There are some other amendments to bring forward.

Attachments 2-4 that were requested at the previous conference committee meeting on 4-19-13 were provided by Pam Sharp, OMB.

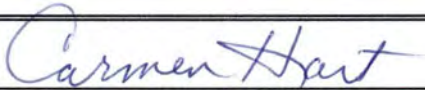
2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1452
April 23, 2013 (AM)
21439

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to eligibility to participate in the defined contribution retirement plan; relating to calculation of accumulated fund balances under the public employees retirement system

Minutes:

Attachment 1

Chair Randy Boehning opened the conference committee on HB 1452. **Attachment 1.** (Amendment)

Jeff Nelson, Legislative Council, appeared to explain Attachment 1. These amendments are asking that the Senate recede from its amendments and that engrossed HB 1452 be amended as provided in the set of amendments. (1:49-3:37)

Senator Dever The option for defined contributions is still in here?

Jeff Nelson Yes, there is a provision for a period of three years new employees entering state service would have the option to elect a defined contribution plan.

Senator Dever At what rate are the contributions to that plan, and do we have anything in here to address any reduction of them?

Jeff Nelson No, the contributions would be the same as for existing employees, defined contributions.

Senator Dever Through the entirety of their career?

Jeff Nelson If the legislature were to reduce contribution rates at some future period for the defined benefit plan, whether that reduction would apply to the defined contribution plan, that is an open question.

Senator Dever We had also talked about that reduction applying to the defined benefit when it reaches 100%, and I don't see that in here.

Jeff Nelson That is not in there. There are no provisions for a future reduction.

Chair Randy Boehning Last session we took care of TFFR. We went at 90 and this session we raised it to the 100%. We can come back next session and if you can't do the 100%, then reduce the rates again.

Senator Dever At least as far as it pertains to the defined contribution, I think that is something that needs to be spelled out going into it. If a state employee is committing themselves in a irreversible decision to go into a defined contribution, then the state it seems to me is committing themselves to their side of it as well.

Senator Nelson I would like to hear Sparb's reaction to the proposed amendment and if there are any problems with it dealing with going forward.

Sparb Collins, PERS, appeared. I will bring up some things that were addressed in the Senate, and then maybe Jeff can tell me whether they were included here or not. In the Senate amendment it provided that the DC option would be effective until 2017 and then would expire and that reduced the cost a point, from 1.06 to .2. Is that included here?

Jeff Nelson Yes.

Sparb Collins That would mean the cost of this would be .2 out of the 2% which is substantially less. There were a couple of technical things. In the original House version, it said that this program wouldn't start until rules were adopted by the board. In the Senate version we addressed that. If this became effective, then the PERS board would have to go through a process of promulgating rules and going through that which would take us until spring or summer 2014 which means this program would be moved back a long ways. The Senate side addressed that it would be based upon policies or rules. Is that clarification?

Jeff Nelson Yes.

Sparb Collins In the House version it said that the amount that would come over would be the actuarial value from the defined benefit plan to the defined contribution plan. The actuarial value, many times because the people haven't gotten any time in, would be less than the actual contributions.

Rep. Scott Louser That would be in the event that a currently employed would transfer from DB to DC and that is not part of this bill anymore.

Sparb Collins That was the third thing that was addressed here. There is a conflict in the statute. The statute says that an employee, for example in the House version, had a certain amount of time to make an election. It was based on probationary periods which vary. For example, an elected or appointed official doesn't have a probationary period. It also said that we have to supply certain information to everybody at the time before they make the election. The Senate version set it up just the way it is today.

Rep. Scott Louser Under the House version you are talking about a newly hired employee that elects defined benefit and within their probation period plus 30 days elects to go to

defined contribution? We are talking about the future value versus the present value or the actuarial value versus market value?

Sparb Collins The way it works today is somebody is automatically enrolled in the defined benefit and then they get this information from us and they have up to six months to switch over to the DC plan. What we do is we transfer the accumulated contributions plus interest over to the DC plan.

Rep. Scott Louser Six months from date of hire?

Sparb Collins From date of hire.

Rep. Scott Louser We are not talking about a lot of accumulated balance here.

Sparb Collins No. In one of the House versions that came out, it said that it would be the actuarial present value instead of __ amount. The actuarial present value is less than the accumulated amount for a brand new employee. It is confusing. In the Senate version we were correcting it to be the actual amount.

Rep. Scott Louser What we are saying here is if the Senate recedes, we are back to the House bill that had some of that language.

Jeff Nelson discussed some information with Sparb Collins.

Sparb Collins If possible, I could meet with Jeff before this afternoon and go through these technical things to make sure they flow correctly.

Chair Randy Boehning That would work.

Rep. Scott Louser To Senator Dever's point where in the TFFR plan where we now have the reversion, once it hits 100% and goes back, the increase contributions for TFFR will amount to 24 ½% of salaries, 11.75 on the employee side, and 12.75 on the employer's side. We had a 2 and 2 and 2 and 2.

Sparb Collins That sounds correct. I am not confident what the TFFR...

Rep. Scott Louser We are in the ballpark at 24 ½% of salaries and it is there until it hits 100% actuarial value. Then it reverts back down to 7.75 on both sides which is 15 ½%. What we are looking at here is approximately 15% of salaries going to...

Sparb Collins It would be 14.12. Previously it was 16.12.

Rep. Scott Louser If we get close, when TFFR hits 100% and it goes back, about 15% of salaries will be contributed to the plan. Under this plan approximately 15% of salaries are going to the recovery efforts as well. The reversion would be about equal.

Senator Dever It is important to acknowledge also that one of the reasons it requires a higher contribution on TFFR than it does in PERS is because there are more active

employees supporting retired employees on PERS than there are on TFFR. This makes it interesting when we are looking also at the defined contribution, because depending on how many people opt for that, we are doing the same thing. We are reducing the number of active employees in the PERS plan supporting the number of retirees going forward.

Chair Randy Boehning With all our new employees being hired this year, it will probably stay about the same.

Senator Dever I think that is the importance of the study and sunset clause.

Senator Krebsbach It seems a little bit odd to me that you wouldn't take the expertise of the committee that has been following this for quite some time to work a study. Like Senator Nelson says, it has to come back to the employee benefits committee anyway.

Chair Randy Boehning I don't know the logic behind it.

Senator Dever I was put on in the Senate GVA committee and one of the members said I don't want to see this done in some back room someplace. I was a little hurt by that because while it may not be the most interesting committee to sit in on, any member of the public including any legislator is more than welcome to come to an employee benefits program committee and see how we operate. I think it is a good thing other legislators gain exposure to this kind of thing as well.

Chair Randy Boehning We will meet this afternoon at 3. The meeting was adjourned.

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

HB 1452
April 24, 2013
21491

☒ Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to eligibility to participate in the defined contribution retirement plan; relating to calculation of accumulated fund balances under the public employees retirement system

Minutes:

Attachment 1-2

Chair Randy Boehning opened the conference committee on HB 1452. Rep. Bill Amerman was present for absent Rep. Steven Zaiser. **Attachment 1** was provided by Jeff Nelson from the legislative council office prior to this meeting. This was the colored version of the bill for the amendment 13.0405.03007. **Attachment 2** was handed out which was a version 8 amendment. In this amendment we have added in Section 3 and a couple other sections that follow that states when the fund hits 100% of value, the monies will come off again like we did with TFFR this last session. Once that hit the 100%, the 4 and 4 will come back off. That is what this amendment will do. Once it hits the 100%, the 1 and 1 will come off. That is the only change in the amendment from the previous amendment yesterday on version 7.

Senator Dever Which plans does this apply to?

Chair Randy Boehning It applies to all the plans. It is followed in each section.

Jeff Nelson, Legislative Council, appeared. The new sections in amendment 03008 are Section 3 which applies to the highway patrolmen's retirement plan and Section 11 which applies to the PERS main system, judges, national guard, and law enforcement plans under the defined contribution plan. Rather than amending each section, I put two sections in the bill, one relating to the highway patrolmen's retirement plan and one relating to the PERS plan.

Senator Dever Section 1 is the PERS plan and Section 2 is the highway patrol?

Jeff Nelson Section 3, if you are looking at the amendment, is the reduction in member and employer contributions applicable to the highway patrolmen's retirement plan which is the first two sections of the bill entitled 39. Section 11 relates to Sections 5, 6, 7, 8, 9, 10, 13, and 15 of the act.

Senator Dever Does this relate also to those who opt into the defined contributions?

Chair Randy Boehning Yes, it does. That is something we can look at in the future. Currently this 1 and 1 won't come off for approximately 30 years, so hopefully in that time, we will have another solution. With the language in there, that would apply to all. I think that is fair. We can study that with the study that is in session 16.

Rep. Scott Louser It says to the rate in effect on the effective date of this act effective on July 1. What we are doing is saying when the fund reaches 100% actuarial value, we are reverting back. We are taking off 1 and 1?

Chair Randy Boehning That is correct. That is the same we did with TFFR in the last session, 4 and 4. This is taking the 1 and 1 back.

Senator Dever People who opt in to defined contributions can expect for that time that the state will contribute 11% and they will contribute 3% and after that point, the state will contribute 10 and they will contribute 2?

Chair Randy Boehning That could possibly be. That is something we are going to have to sit down and really address in interim how that will work. We can change going forward or we can change going retrospect except we can't decrease. We can increase.

Senator Krebsbach My understanding is that whatever is stated in the bill stands as what we would intend to do throughout. In other words, the Attorney General's opinion says whatever is promised in the beginning is what carries on unless some exception is made within the law when it is written. I wonder if Sparb could clarify that for us, and if there would be some exception we could state in this bill to allow for us to make changes in that area?

Sparb Collins, PERS, appeared. I didn't get your entire question.

Senator Krebsbach Whatever is stated is set in place and according to the Attorney General's opinion, we can't make changes. However, if we make an exception within the bill as we institute it, then perhaps we could have some flexibility. Did I understand that to be correct or not?

Sparb Collins It is my understanding that if in the enacting legislation you reserve right to do something, then that has been reserved. Again, I am not an attorney.

Senator Krebsbach When I am listening to the fact that we can study in the interim and make changes, I want to know what changes would we be allowed to make in that time?

Chair Randy Boehning That would be something once we make the decision and go through the interim and study this. With defined contribution, it is a whole different animal versus defined benefits. It is probably easier to work with defined contributions because we are not promising a set amount of money when they retire versus defined benefits when they retire, they are going to receive a set amount of money for the rest of their life unless we adjust it at some point like with the 13th payment or some other increases in there. With

defined contributions, we have more give and take in that versus with the defined benefits. Once you give them the benefit, you can't take any of the benefit away.

Senator Dever I don't know that you can call it give and take. The defined benefit, as you say, the benefit is what you receive when you retire and we are adjusting the contribution rate necessary to maintain the integrity of the fund. On the defined contribution side, from my perspective, the contribution is the benefit and then what they receive. Unless we say it in the bill under what circumstance it is going to be reduced, we are committed to that. The employee who makes that choice, as we say in the bill, cannot reverse their decision to go to defined contributions so they are making that long-term choice based on what they see to be our long-term commitment to that contribution. Just so we are clear on that.

Chair Randy Boehning We are.

Rep. Scott Louser Page 7, Section 3 and 11, the rate must be reduced to the rate in effect which is today's rate. We are making that exception in this amendment already. That is how I read it. I am not even sure what the study would produce if we are already saying it must be done when the DB plan hits 100%. Regardless of which one you are in, you go back to the current rate.

Senator Dever I think the purpose of the study is to determine whether or not we should go completely to a defined contribution because I think there are people that would like to see us do that and what the implications are in that. I am okay with 100%. It is my understanding that a pension fund is considered to be fully funded when it's 90% or more.

Chair Randy Boehning I think there are probably two different answers. Fully funded is 100% but I have heard the 90% term too.

Senator Dever I think that just reflects that it fluctuates a little bit.

Chair Randy Boehning Yes.

Rep. Scott Louser As we were debating the TFFR bill that took it from 90 to 100, that was the testimony of those that felt a fully funded pension plan was 100%. That was the goal. I would move the amendments.

Senator Dever seconded. You mentioned that the House majority leader said that any additional adjustments that we see to be made would be made on the OMB bill. We three conferees sat down with the Senate OMB conferees and had that conversation so if that comes about, I think they will be ready.

Chair Randy Boehning I think we shouldn't have to do anything else unless there is something that comes out here in the next day or two. I know we are already starting to pass pay packages so we should get this passed out too because once the appropriations budgets are out, they are based on the 1 and 1.

Senator Dever If the study that is going to take place in some other committee in the interim suggests that we make any other approach, then I think we recognize that applies to any new employees after any further changes.

Chair Randy Boehning Yes. It is hard to go back and amend something that was applied previously.

A roll call vote was taken and resulted in **SENATE RECEDE FROM SENATE AMENDMENTS AND AMEND AS FOLLOWS, 13.0405.03008, 6-0.**

The conference committee for 1452 is dissolved.

FISCAL NOTE
Requested by Legislative Council
04/08/2013

Amendment to: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$6,183,400	\$5,409,300	\$12,366,800	\$10,809,600
Appropriations	\$0	\$0	\$6,183,400	\$5,409,300	\$12,366,800	\$10,809,600

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$3,206,350	\$6,407,450
Cities	\$0	\$1,627,250	\$3,251,850
School Districts	\$0	\$3,045,100	\$6,085,100
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill adjusts the employer and employee contributions to the state retirement plans to implement the last two years of the four year recovery plan and to offer an optional defined contribution plan to new state employees.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill increases member and employer contributions for the NDPERS Main (Section 4,5,6), Judges (Section 7), Highway Patrol (Section 1 & 2), and Defined Contribution (Section 11 & 13) systems by 1% each in January of 2014 and 2015. The Law Enforcement Plans (Section 9) and National Guard Plan (Section 8), increase by 1/2% for the member over the same period of time. The bill is to implement the last two years of the recovery plan and offer the optional defined contribution plan. Section 17 provides a \$22,000 appropriation to the Public Employees Retirement System for implementation of the provisions of this bill.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

See 2B above.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

See 2B above, the appropriation is included in the executive budget.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

FISCAL NOTE
Requested by Legislative Council
04/01/2013

Amendment to: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$6,183,400	\$5,409,300	\$12,366,800	\$10,809,600
Appropriations	\$0	\$0	\$6,183,400	\$5,409,300	\$12,366,800	\$10,809,600

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$3,206,350	\$6,407,450
Cities	\$0	\$1,627,250	\$3,251,850
School Districts	\$0	\$3,045,100	\$6,085,100
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill adjusts the employer and employee contributions to the state retirement plans to implement the last two years of the four year recovery plan and to offer an optional defined contribution plan to new state employees.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill increases member and employer contributions for the NDPERS Main (Section 4,5,6), Judges (Section 7), Highway Patrol (Section 1 & 2), and Defined Contribution (Section 11 & 13) systems by 1% each in January of 2014 and 2015. The Law Enforcement Plans (Section 9) and National Guard Plan (Section 8), increase by 1/2% for the member over the same period of time. The bill is to implement the last two years of the recovery plan and offer the optional defined contribution plan. Section 17 provides a \$22,000 appropriation to the Public Employees Retirement System for implementation of the provisions of this bill.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

See 2B above.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

See 2B above, the appropriation is included in the executive budget.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

FISCAL NOTE
Requested by Legislative Council
02/12/2013

Amendment to: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$6,028,000	\$5,278,500	\$6,028,000	\$5,278,500
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$2,792,500	\$2,792,500
Cities	\$0	\$1,197,500	\$1,197,500
School Districts	\$0	\$2,986,500	\$2,986,500
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide NEW State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 10% of the new members would elect to transfer (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.06% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$18.3 million. Over the last 10 years about 16% of newly hired nonclassified employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8% . Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. If we assumed that the number making this election to transfer was annually 5% of the new hires, then the main hybrid plan contributions would need to increase by .58% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$10.0 million. Alternatively, if we assume that 15% of the new hires, then contributions would need to increase by 1.57% in the Main/Hybrid Plan. This would have a total biennium cost of \$27.0 million. As illustrated, the cost varies substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgate pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$22,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.06%, assuming 10% of the new hires transfer, or .58%, assuming 5% of the new hires transfer, or 1.57% if 15% of the new hires transfer. Contribution requirements for the other smaller systems would need to change as well. At the level of 10% of the new hires, the Judges contribution would need to go up by 1.07%, the law enforcement contribution would need to go up .52% and National Guard would need to go up .34%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$9,440,000	\$8,352,000	\$9,440,000	\$8,352,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$4,368,000	\$4,368,000
Cities	\$0	\$1,873,000	\$1,873,000
School Districts	\$0	\$4,672,000	\$4,672,000
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow existing and new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 15% of the existing members would elect to transfer and 10% of newly hired employees annually thereafter (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.66% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$28.6 million. When this option was originally offered to non-classified state employees in 1999, 38% elected to transfer. Over the last 10 years about 16% of newly hired employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8%. The above projections use a lower election rate for existing employees due to the current economic conditions. Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. The second area contributing to the actuarial effect is that existing employees are allowed to transfer the full present value of their accrued benefit. This would result in a transfer of assets greater than the assets that currently support the benefit, causing the plan to take a loss for each member transferring that would need to be paid by increased contributions from those remaining. If this provision was modified to make it present value less unfunded liability it would reduce the cost for the main hybrid plan. If we assumed that the number making this election to transfer was annually 10% of the existing members and 5% of the new hires, then the main hybrid plan contributions would need to increase by .95% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$16.4 million. Alternatively, if we assume that 20% of the existing members elect to transfer and 15% of the new hires then contributions would need to increase by 2.42% in the Main/Hybrid Plan. This would have a total biennium cost of \$41.7 million. As illustrated, the cost varies

substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgate pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$106,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.66%, assuming 15% of the existing members transfer and 10% of the new hires, or .95%, assuming 10% of the existing members transfer and 5% of the new hires, or 2.42% if 20% of the existing members transfer and 15% of the new hires. Contribution requirements for the other smaller system would need to change as well. At the level of 15% of the existing members and 10% of the new hires, the Judges contribution would need to go up by 1.64%, the law enforcement contribution would need to go up .76% and National Guard would need to go up .46%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

VK
4/24/13
10810

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

That the Senate recede from its amendments as printed on pages 1302-1309 of the House Journal and pages 1185-1192 of the Senate Journal and that Engrossed House Bill No. 1452 be amended as follows:

Page 1, line 1, after "to" insert "create a new section to chapter 39-03.1 and a new section to chapter 54-52 of the North Dakota Century Code, relating to expiration of the increase in highway patrolmen's retirement plan and public employees retirement system member and employer contributions; to"

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, remove the second comma

Page 1, line 2, replace "54-52.6-15" with "54-52.6-09"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and to repeal section 54-52.6-03 of the"

Page 1, remove line 4

Page 1, line 5, replace "public employees retirement system" with "to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, ~~and~~ with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.

- 20610
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.
 3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and

with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1.

SECTION 3. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Reduction in member and employer contributions.

The required increase in the amount of member and employer contributions under sections 1 and 2 of this Act must be reduced to the rate in effect on the effective date of this Act effective on the July first that follows the first valuation of the highway patrolmen's retirement plan showing a ratio of the actuarial value of assets to the actuarial accrued liability of the highway patrolmen's retirement plan that is equal to or greater than one hundred percent."

Page 1, after line 21, insert:

"SECTION 5. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also 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. 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 6. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible

to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.

2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 7. 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.

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, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 8. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 9. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 10. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment.

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

Reduction in member and employer contributions.

The required increase in the amount of member and employer contributions under sections 5, 6, 7, 8, 9, 10, 13, and 15 of this Act must be reduced to the rate in effect on the effective date of this Act effective on the July first that follows the first valuation of the public employees retirement system main system showing a ratio of the actuarial value of assets to the actuarial accrued liability of the public employees retirement system main system that is equal to or greater than one hundred percent."

Page 2, line 12, replace "is hired after July 30, 2013" with "elects to participate in the retirement plan under this chapter"

Page 3, after line 2, insert:

"SECTION 13. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, remove lines 27 through 31

Page 8, replace lines 1 through 8 with:

"SECTION 15. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly

9/8/10

reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.

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 16. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits programs committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 17. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 18. EFFECTIVE DATE. Sections 4, 12, and 14 of this Act become effective on October 1, 2013.

SECTION 19. EXPIRATION DATE - SUSPENSION. Sections 4, 12, and 14 of this Act are effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03, as it existed on September 30, 2013, becomes effective on August 1, 2017."

Renumber accordingly

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government and Veterans Affairs

Bill/Resolution No. 1452 as (re) engrossed

Date: _____

Roll Call Vote #: _____

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: _____ Seconded by: _____

Representatives				Yes	No		Senators				Yes	No
Rep. Boehning	X	X	X				Senator Dever	X	X	X		
Rep. Louser	X	X	X				Senator Krebsbach	X	X	X		
Rep. Zaiser	X	X	X				Senator Nelson	X	X	X		

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government and Veterans Affairs

Bill/Resolution No. 1452 as (re) engrossed

Date: 4-24-13

Roll Call Vote #: _____

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

House Senate Amendments on HJ/SJ page(s) 1302 - 1309

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1452 was placed on the Seventh order of business on the calendar

Motion Made by: Louser Seconded by: Dever

Representatives	Yes	No		Senators	Yes	No
Rep. Boehning	X			Senator Dever	X	
Rep. Louser	X			Senator Krebsbach	X	
Rep. Zaiser (Amerman 4-24-13) (Zaiser absent 4-24)	X			Senator Nelson	X	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Boehning Senate Carrier Dever

LC Number 13.0405 . 03008 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1452, as engrossed: Your conference committee (Sens. Dever, Krebsbach, Nelson and Reps. Boehning, Louser, Amerman) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1302-1309, adopt amendments as follows, and place HB 1452 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1302-1309 of the House Journal and pages 1185-1192 of the Senate Journal and that Engrossed House Bill No. 1452 be amended as follows:

Page 1, line 1, after "to" insert "create a new section to chapter 39-03.1 and a new section to chapter 54-52 of the North Dakota Century Code, relating to expiration of the increase in highway patrolmen's retirement plan and public employees retirement system member and employer contributions; to"

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, remove the second comma

Page 1, line 2, replace "54-52.6-15" with "54-52.6-09"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and to repeal section 54-52.6-03 of the"

Page 1, remove line 4

Page 1, line 5, replace "public employees retirement system" with "to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, ~~and~~ with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of

section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1.

SECTION 3. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Reduction in member and employer contributions.

The required increase in the amount of member and employer contributions under sections 1 and 2 of this Act must be reduced to the rate in effect on the effective date of this Act effective on the July first that follows the first valuation of the highway patrolmen's retirement plan showing a ratio of the actuarial value of assets to the actuarial accrued liability of the highway patrolmen's retirement plan that is equal to or greater than one hundred percent."

Page 1, after line 21, insert:

"SECTION 5. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also 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. 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 6. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.

2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.
4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 7. 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.

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, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 8. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of

January 2014. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 9. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 10. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment.

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

Reduction in member and employer contributions.

The required increase in the amount of member and employer contributions under sections 5, 6, 7, 8, 9, 10, 13, and 15 of this Act must be reduced to the rate in effect on the effective date of this Act effective on the July first that follows the first valuation of the public employees retirement system main system showing a ratio of the actuarial value of assets to the actuarial accrued liability of the public employees retirement system main system that is equal to or greater than one hundred percent."

Page 2, line 12, replace "is hired after July 30, 2013" with "elects to participate in the retirement plan under this chapter"

Page 3, after line 2, insert:

"SECTION 13. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, remove lines 27 through 31

Page 8, replace lines 1 through 8 with:

"SECTION 15. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.
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 16. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan

and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits programs committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 17. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 18. EFFECTIVE DATE. Sections 4, 12, and 14 of this Act become effective on October 1, 2013.

SECTION 19. EXPIRATION DATE - SUSPENSION. Sections 4, 12, and 14 of this Act are effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03, as it existed on September 30, 2013, becomes effective on August 1, 2017."

Renumber accordingly

Engrossed HB 1452 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1452

TESTIMONY OF SPARB COLLINS ON HOUSE BILL 1452

Mr. Chairman, members of the committee, good afternoon my name is Sparb Collins. I am the Executive Director of the North Dakota Public Employees Retirement System. Today I appear before on behalf of the PERS Board and in a neutral position on this bill as long as the costs associated with this option are funded.

Along with me today is Brad Ramirez and Tammy Dixon, our retirement plan actuaries with the Segal Company. Pursuant to legislative requirements, they have done a technical and actuarial analysis of the proposed bill. I am handing that out to you now. Mr. Chairman if it is okay with you, I will ask Brad to review with the committee the actuarial implications of the bill. Following this, I will review with the committee the attached "Considerations, Implications and Options" of HB 1452 which highlights some of the material from the review.

HB 1452 Considerations, Implications, Options

Considerations	Implications	Options
Contributions	Contributions will need to be increased to pay for this additional benefit or it will increase the unfunded status of the plan (see Attachment 1)	Add language increasing contributions for the various retirement plans
Cost: Existing employee transfer	HB 1452 transfers the present value of the benefit (100% of accrued benefit); however, the plan is only funded at 65.1%. This means that for everyone that transfers out, we take a loss and the opportunity to use the earnings from their funds to close the funding gap	This can be mitigated by limiting the transfer for existing employees to the present value less the unfunded liability. This would reduce the total cost (see Attachment 2)
Cost: New employee	When they leave they are not longer contributing to paying the unfunded liability. This drives up cost on those remaining	Only allow DC transfers to have the normal cost portion of the contribution only (10%) and have the amount associated with the unfunded liability continue to be paid into the plan. This combined with the above would virtually eliminate the incremental cost.
Transfer method: New employee transfer	The transfer is the present value of benefit. In all cases this will be less than the employer and employee contribution.	For new employees specify that it is the higher of contributions or present value
Political subdivision	They are going to be allocated part of the cost	Split the plan into two – however, this will increase the state cost substantially.
Rules adopted by the board	PERS will not be able to implement the provision of the bill until we have gone through the rule making process. This means that it will be spring of 2014 before implementation	Leave the same or change to “policies of the board”
Administrative Cost	PERS has much of this in place, no new FTE are requested but mailing, printing, system modification costs, etc will be incurred (\$106,000) (see Attachment 3)	Include a specific appropriation or have PERS go to its contingency line item. If contingency is to be used it would be beneficial that a statement of legislative intent be added

Attachment 1

Estimated Cost to Payroll of HB 1452

		State & Subs					
	Req	New Actuarial Req Cont.			Contribution Increase		
	Cont	10%/5%	15%/10%	20%/15%	10%/5%	15%/10%	20%/15%
Main	12.24%	13.19%	13.90%	14.66%	0.95%	1.66%	2.42%
Judges	16.33%	17.29%	17.97%	18.76%	0.96%	1.64%	2.43%
Law Enf	10.69%	11.10%	11.45%	11.81%	0.41%	0.76%	1.12%
Nat Guard	7.40%	7.67%	7.86%	8.09%	0.27%	0.46%	0.69%
Total cost					\$ 16,367,000	\$ 28,599,000	\$ 41,693,000
General funds					\$ 5,403,000	\$ 9,440,000	\$ 13,762,000
Other funds					\$ 10,964,000	\$ 19,159,000	\$ 27,931,000

Attachment 2

Estimated Cost to Payroll of HB 1452 (Less Unfunded Liability Associated with Member Transfers)

	Req	New Actuarial Req Cont.			Contribution Increase		
	Cont	10%/5%	15%/10%	20%/15%	10%/5%	15%/10%	20%/15%
Main	12.24%	12.82%	13.30%	13.81%	0.58%	1.06%	1.57%
Judges	16.33%	16.94%	17.40%	17.91%	0.61%	1.07%	1.58%
Law Enf	10.69%	10.95%	11.21%	11.48%	0.26%	0.52%	0.79%
Nat Guard	7.40%	7.59%	7.74%	7.90%	0.19%	0.34%	0.50%
Total cost					\$ 9,993,000	\$ 18,262,000	\$ 27,049,000
General funds					\$ 3,298,000	\$ 6,028,000	\$ 8,928,000
Other funds					\$ 6,695,000	\$ 12,234,000	\$ 18,121,000

NDPERS Administrative Costs
HB 1452

	Amount
Communication materials (printing/ mailing)	\$48,641
Informational meetings	\$3,000
Enhancements to business system	<u>\$54,000</u>
TOTAL	\$105,641

Attachment 2



5670 Greenwood Plaza Boulevard Suite 425 Greenwood Village, CO 80111-2499
T 303.714.9900 F 303.714.9990 www.segalco.com

January 28, 2013

Mr. Sparb Collins
Executive Director
State of North Dakota Public Employees' Retirement System
400 East Broadway, Suite 505
P.O. Box 1657
Bismarck, ND 58502

Re: **Technical Comments – HB 1452**

Dear Sparb:

The following presents our analysis of the proposed changes found in draft HB 1452:

Systems Affected: North Dakota Public Employees Retirement System (PERS) Hybrid Plan and Defined Contribution Plan (DC Plan)

Summary: The proposed legislation would provide State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board. Existing employees who elect to participate in the Defined Contribution Plan will have a lump sum transferred from the Hybrid Plan to an individual account in the Defined Contribution Plan. The lump sum amount shall be the actuarial value of the individual member's accumulated benefit obligation in the Hybrid Plan, based on the assumption that the member will retire at the earliest applicable normal retirement age. Such transfer will not affect the member's health benefits or retiree health benefits.

Actuarial Cost and Technical Analysis: This Bill would have a material actuarial impact on the assets and liabilities of the Hybrid Plan, as follows:

The Bill would allow current participants to elect to transfer the full amount of their Hybrid Plan Actuarial Accrued Liability to the Defined Contribution Plan. Since the Hybrid Plan is currently less than 100% funded, this would result in a transfer of assets greater than the assets that currently support the benefits. As a result, contribution requirements for those who remain in the Hybrid Plan will see an increase in costs, as they would pay for the unfunded portion of the benefits of the transferring participants.



It is difficult to predict which participants would elect to transfer under this Bill. Experience over the last ten years would indicate that 16% of those new hires eligible to choose between the Hybrid Plan and the Defined Contribution Plan at date of hire choose the Defined Contribution Plan. More recent election rates have been lower, around 7.8%. It is also difficult to predict what existing employees may do when offered this election. When offered to nonclassified employees in 1999, about 38% elected to transfer. However, the environment has changed substantially since then, so we expect the rate would be lower.

Our understanding is that the Bill would allow current participants a one-time election to transfer out of the Plan and new employees the option to choose between the Hybrid Plan and the Defined Contribution Plan at date of hire. Because it is difficult to predict the number of participants that would transfer, we have illustrated the effects of three scenarios on the employer cost rate as a percentage of projected payroll. In the first scenario, we have assumed that 10% of existing participants leave and 5% of the new employees elect the Defined Contribution Plan each year thereafter. In the second scenario, we have assumed that 15% of participants leave and 10% of the new employees elect the Defined Contribution Plan each year thereafter. In the third scenario, we have assumed that 20% of participants leave and 15% of the new employees elect the Defined Contribution Plan thereafter. These will increase the costs of funding the ongoing benefits and the unfunded liability as a percent of pay, as follows:

Group	Employer Cost Rate – 2012 Actuarial Valuation	Statutory Employer Cost Rate – 2013	(1) 10%/5% Assumption– Resulting Cost Rate	(2) 15%/10% Assumption– Resulting Cost Rate	(3) 20%/15% Assumption– Resulting Cost Rate
PERS Main*	12.24%	6.12%	13.19%	13.90%	14.66%
Judges	16.33%	16.52%	17.29%	17.97%	18.76%
Law Enforcement w/Prior Service**	10.69%	9.31%	11.10%	11.45%	11.81%
National Guard	7.40%	6.50%	7.67%	7.86%	8.09%

*Only Main State employees would be allowed to transfer under the Bill

**Only BCI employees would be allowed to transfer under the Bill

The Bill specifies that the Actuarial Accrued Liability be calculated assuming that the transferring participant will retire at the earliest unreduced retirement date. This is a slightly more conservative measure than the assumption used for funding the Hybrid Plan, and would result in a larger transfer of funds than if the Plan's valuation assumptions were used. For participants with lower service, the benefits calculated under the Plan formula will likely have a smaller present value than the participant's vested contributions. In this case, we calculated the amount of the transfer to simply be the balance of vested contributions with interest.

As mentioned above, the Bill provides that 100% of the liability be transferred for these participants. If the Bill were altered so that only the funded portion of the participants' Actuarial Accrued Liability is transferred to the Defined Contribution plan (64.7% for the PERS Main Plan as of July 1, 2012), the Resulting Employer Cost Rate for ongoing Hybrid Plan participants would be as follows:

As above, in the first scenario, we have assumed that 10% of participants leave and 5% of the new employees elect the Defined Contribution Plan each year thereafter. In the second scenario, we have assumed that 15% of participants leave and 10% of the new employees elect the Defined Contribution Plan each year thereafter. In the third scenario, we have assumed that 20% of participants leave and 15% of the new employees elect the Defined Contribution Plan thereafter. These will increase the costs of funding the ongoing benefits and the unfunded liability as a percent of pay, as follows:

Group	Funded Percentage	Employer Cost Rate – 2012 Actuarial Valuation	Employer Cost Rate – Ultimate Statutory Rates	(1) 10%/5% Assumption– Resulting Cost Rate	(2) 15%/10% Assumption– Resulting Cost Rate	(3) 20%/15% Assumption– Resulting Cost Rate
PERS Main*	64.7%	12.24%	6.12%	12.82%	13.30%	13.81%
Judges	89.8%	16.33%	16.52%	16.94%	17.40%	17.91%
Law Enforcement w/Prior Service**	64.9%	10.69%	9.31%	10.95%	11.21%	11.48%
National Guard	91.6%	7.40%	6.50%	7.59%	7.74%	7.90%

*Only Main State employees would be allowed to transfer under the Bill

**Only BCI employees would be allowed to transfer under the Bill

If the participants are given a choice of participation in either the current Hybrid Plan or the Defined Contribution Plan, the risk of antiselection will be introduced to the System. Antiselection risk is the tendency of participants to select the choice that benefits them the most. For example, participants who may be less healthy than average may be more likely to elect to transfer to the Defined Contribution Plan, which would allow for a faster payout of benefits than the lifetime payments offered by the Hybrid Plan. This effect could result in more costly benefits for the Hybrid Plan than otherwise would be expected, and will increase the volatility of contribution requirements. That is, if the election rates are higher than expected, it will increase required contributions for the Hybrid Plan. If lower, it could reduce requirements. This same situation would occur even if total election rates are lower, but those electing have higher than expected costs.

Technical Comments: Our comments on the Bill are as follows:

General

The Bill would provide a new opportunity for existing members to make a one-time irrevocable election as to whether they will participate in a defined benefit plan or defined contribution plan, including members who have not previously had an opportunity to participate in the Defined Contribution Plan, such as judges. In addition, the Bill could have an impact on PERS, to the extent a large number of employees elect to transfer into the DC Plan, in the following areas:

- Similarly situated employees would have different levels and forms of retirement benefits;
- The proposed changes could have an impact on the funding status of the defined benefit plans; and
- The role of the PERS in administering retirement benefits for State employees could shift as a result of a large increase in the number of DC Plan participants.

Benefits Policy Issues

> Adequacy of Retirement Benefits

- ◆ *Replacement Ratio:* In comparison to members in the current defined benefit plans, the replacement ratios of income by retirement benefits for new members in the DC Plan are expected to decrease from that which is currently provided for several reasons, including the following.
 - In practice, individually-managed accounts can expect lower investment returns than a longer time horizon, professionally-managed defined benefit fund.
 - Defined contribution accounts suffer from “leakage” as funds are used for purposes other than retirement.
 - There is a higher cost of annuitization at market annuity rates, or else members must assume longevity risk on top of investment risk.

In a letter dated December 7, 2011, we provided updated analysis of how benefits under the defined benefit plans compare to benefits under the DC Plan. It showed that the contribution rate for the DC Plan would need to be increased in order to provide a benefit that is comparable to the current defined benefit plans. Specifically the analysis shows the following for individuals who are presently in the DC Plan established in the late 1990’s:

1. DC Plan participants are projected to have a retirement benefit that is on average 50% less than what they would have had if they stayed in the applicable defined benefit plan.
2. DC Plan contributions will need to increase to 16.5% to 20% to provide a benefit similar to the current defined benefit plans (under the Hybrid Plan a 25-year employee would receive 50% of their final average salary).

3. The benefit provided in the existing DC Plan is not providing a benefit comparable to the defined benefit plans at the existing contribution levels.
 4. The DC Plan does not provide the same level of spouse or disability benefits as the defined benefit plans.
- ◆ *Retirement Savings:* The nature of the DC Plan with lump sum benefit payments may decrease the amount of a member's retirement benefit that will be available for retirement to the extent it is used for current consumption. Employee Benefit Research Institute (EBRI) statistics indicate that because of this "leakage" effect, less than 100% of employer contributions will actually be used to provide retirement benefits. Based upon the EBRI study entitled "Reported Uses for Any Portion of Lump-sum Distributions", the average amount of distributed funds retained in retirement vehicles (tax-qualified financial savings) is 41.5%. Seventeen percent is saved, and the remainder (41.5%) is used for debt, education or consumption. Forty-six percent of these individuals rolled over at least some of the money into another retirement plan and 27% put some of the money into other savings investments. Because of this "leakage" effect, less than 100% of the employer contributions will actually be used to provide retirement benefits. Nationally, 58.5% of any lump sum distribution is not used for retirement purposes. The current defined benefit plans have minimal leakage of employer contributions.

On average, refund payments under the PERS are approximately 24% of the employee contributions. Of these refunds, 58.5% will be used for non-retirement purposes if the national statistics are applied. Thus, the leakage rate on employee contributions is estimated to be about 14% per year.

If these patterns of refunds and uses of lump sum distributions remain unchanged, the leakage rate on employer contributions under the DC Plan could be presumed to be 14%. For every \$1,000,000 of employer contributions accumulated, about \$140,000 will not be available for retirement purposes.

- ◆ *Personal savings:* Participation in a defined contribution plan may increase interest of members to save for retirement because of the participant directed investment feature and the awareness that it is important to save for their own early retirement or post-employment inflation protection. However, the State's DC Plan does not provide any separate monetary incentive or opportunity to increase personal savings. The PERS Main System added the Portability Enhancement Provision (PEP) in 1999. One aspect of this provision is to create an incentive for members to engage in supplemental retirement savings. Specifically, this feature provides that if a member participates in the State's deferred compensation plan, they will vest in the employer contribution in the Hybrid Plan. This provision has helped to encourage participation in the supplemental savings plan and has been successful at enhancing the overall retirement preparedness for those participants. The proposed DC Plan would not have a similar defined benefit incentive to encourage participation.

➤ Benefits Equity and Group Integrity

- ◆ Since members of the Highway Patrolmen's Retirement System (HPRS) do not have the opportunity to elect between a defined benefit plan and a defined contribution plan, there is an inequity of benefits and choice of plans between HPRS and the PERS Main System.
- ◆ Allowing most State employees to elect between a defined benefit plan and a defined contribution plan alleviates the current benefits equity problem whereby two similarly situated State employees who perform similar services, one which must participate in the defined benefit plan and the other which may participate in a defined contribution plan or a defined benefit plan, have very different retirement benefits. However, this Bill does not create benefit equality because two employees with identical positions, age and service who elect different retirement plans may still have unequal retirement benefits.
- ◆ The benefits equity issue whereby different retirement plans are elected highlights the importance of the educating State employees on the different aspects of defined benefit versus defined contribution plans, as well as the various risks and rewards of each type of plan, and may lead to increased scrutiny of the PERS decisions with respect to both the investment of the defined benefit plan funds and the investment choices offered under the DC Plan.
- ◆ In addition, we note that nonvested defined benefit plan members who transfer to the DC Plan may be immediately increasing their vesting percentage in their pension benefits compared to similar employees who do not transfer.
- ◆ This Bill is providing all members who elected not to transfer to the DC plan back in 1999 a second election opportunity. However, those that elected to transfer are not similarly offered a second election opportunity.
- ◆ This PERS group is composed of state employees and political subdivision employees. This option is provided to state employees and not to political subdivision employees. This reduces the cost of offering this option, but since the cost is amortized over the entire group, political subdivisions are a prorated part of the cost for this option for State employees.

➤ Competitiveness

The DC Plan design increases the ability of shorter-term employees to earn and retain a valuable retirement benefit. The PERS Main System Portability Enhancement Provision (PEP) also offers similar benefits, which can be a valuable tool for attracting such employees. The DC Plan, however, may be less competitive for career employee positions compared to other public employee retirement plans. These changes could motivate job mobility and increase turnover. This may or may not be desirable depending on the workforce issues facing the employer.

In another sense, the Bill will be following the trend among smaller private sector employers and some larger private employers to use defined contribution plans instead of defined benefit arrangements as a primary vehicle for retirement benefits. However, other larger

private sector employers and most public sector employers have continued to maintain a combination plan structure - a core defined benefit plan with a supplemental set of defined contribution and/or profit sharing arrangements.

➤ Purchasing Power Retention

A defined contribution plan does not provide guaranteed purchasing power retention after benefits are distributed. The ability to maintain purchasing power will depend solely on the investment performance of the distributed assets. It is not possible under current federal tax laws to directly provide post-retirement increases for defined contribution plan retirees. Similarly, the existing plan does not guarantee purchasing power retention, and in a high inflation economy, may be subject to a significant reduction unless legislative action is taken to adjust the benefits.

➤ Preservation of Benefits

A defined contribution plan can work well to preserve the value of benefits for former members but actual preservation of such values will depend on the investment performance on the amounts distributed. To the extent benefits are not invested adequately or not saved at all for retirement purposes, then the ability to preserve the value of the retirement benefits is diminished.

In July 2009, the federal Government Accountability Office (GAO) published a report that found workers face a number of risks in both accumulating and preserving pension benefits. The GAO found, in relevant part, that workers that receive lump sum distributions, in particular, face several risks related to how they withdraw their benefits, including:

- ◆ *Longevity risk:* Retirees may draw down benefits too quickly and outlive their assets. Conversely, retirees may draw down their benefits too slowly, unnecessarily reduce their consumption, and leave more wealth than intended when they die.
- ◆ *Investment risk:* Assets in which retirement savings are invested may decline in value.
- ◆ *Inflation risk:* Inflation may diminish the purchasing power of a retiree's pension benefits.

➤ Portability

The Bill generally provides a high degree of portability of retirement benefits for State employees who participate in the DC Plan, since their entire benefit is available for distribution or rollover after termination of employment. Note that with the PEP the existing defined benefit plan also has a significant level of portability, but not to the same level.

➤ Transfer Methodology

On page six of the Bill, the transfer calculation is specified. This means the amount to be transferred will be the greater of employee contributions with interest and the lump sum value of the vested benefit calculated at the participant's earliest unreduced retirement age. For younger and lower service employees, this will generally be the contributions with interest.

Calculations will be required for existing participants considering a transfer. Staff will either need to request these calculations from the actuary, or establish an internal system to calculate these amounts.

➤ Ancillary Benefits

- ◆ Pre-retirement death benefits and disability benefits provided under a defined contribution plan would generally be less than similar benefits provided under a defined benefit plan structure because defined contribution plan benefits depend on the total amount of contributions made and investment performance of assets, while defined benefit plan benefits are not contingent upon such factors. Specifically:
 1. The Hybrid Plan provides for a disability retirement benefit of 25% of final average salary calculated at the date of disability. A member is eligible for this after six months of participation in the system. The DC Plan would offer no other disability benefits other than the account balance at the date of disability, which in most cases would be much less than the current Hybrid Plan disability benefit. Many employers provide disability insurance benefits to employees, which offsets the need for this in the retirement plan. It is our understanding the State does not currently provide employer paid disability insurance to its employees, meaning that under the Bill disability benefits would be less than State employees currently receive under the Hybrid Plan.
 2. The Hybrid Plan provides benefits for the surviving spouse whereby the spouse has three choices: 1) a lump sum payment of the member contributions with interest, 2) lifetime payment of monthly benefit equally to 50% of the deceased member's accrued single life benefit, or 3) if the member at death was eligible for a normal retirement benefit, the spouse can select a benefit equal to the member's 100% joint and survivor annuity benefit. In the DC Plan, the spouse would be eligible to receive a lump payment of the account balance only. Generally, the DC Plan benefit would be significantly less than the spouse benefits in the Hybrid Plan. Many employers do have employer paid life plans that offset the need for this benefit in the retirement plan. In the DC Plan, a death benefit could be added or the State could provide expanded life insurance coverage to provide for the surviving spouse; otherwise, the Bill would result in lower death benefits for State employees than are provided by the current Hybrid Plan.
- ◆ The defined benefit plans have from time to time, provided for retiree increases over time with ad hoc adjustments. This has occurred as a result of favorable plan experience and when the plan's funding situation has allowed. Given the present challenges it is unlikely that the fund will be able to support any ad hoc adjustments until the plan's funding challenges are overcome. If the proposed recovery plan is fully adopted, this will not occur until approximately 2040-2045. However, at some future date it is possible that the plans may reach a funded level that would allow it to again provide ad hoc adjustment to retirees.

The DC Plan does not provide for sharing of favorable plan experience among members, nor does it specifically provide for ad hoc adjustments to retirees. However, for any members in the DC Plan that realize favorable investment experience, they are able to benefit from what would generally be comparable to an ad hoc adjustment. If the State

has a wish to someday provide retiree adjustments, a new process would need to be identified.

- ◆ Social Security: No impact.

Funding Policy Issues

> Actuarial Impacts

As previously noted, the Bill will have an actuarial impact on the Hybrid Plan.

- ◆ The Bill will have an immediate effect on the actuarial contribution requirement.
- ◆ The Bill will not provide for a change in the statutory contribution rate.
- ◆ While the resulting Employer Cost Rate will be higher, the total contribution amount will be lower.

> Investment Impacts

- ◆ Depending on the performance of the capital markets and the investment choices made by members, new employees participating in the DC Plan may experience greater, or, more likely, lesser benefits than those provided under the current Hybrid Plan. The risk of loss or gain is borne by the member. No significant changes are required in the Hybrid investment practices as a result of this change. However, if a large portion of participants leave the plan, it may force a change in investment decisions.
- ◆ *Cash Flow*: In general, the Bill will cause cash flows under the defined benefit plans to be altered as membership decreases in the defined benefit plans as currently anticipated. This will impact cash flow needs for funding and benefit payments under the plan. These changes are projected to impact the overall funding of the plans for the future, as previously described. It may be desirable to conduct asset-liability and cash flow studies to better predict the outcomes for the defined benefit plans.
- ◆ *Asset Allocation*: The Bill should not create significant new investment asset allocation issues for the defined benefit plans under the PERS as the amount of new contributions to the plans decreases relative to the amount of benefit payments from the plans.

Administration Issues

> Implementation Issues

In order for this Bill to be implemented, Section 3 of HB 1452 amends NDCC 54-52.6-02 by deleting subsections 1 through 4 and introducing the following language:

“The board shall provide an opportunity for members of the public employees retirement system under chapter 54 - 52 to transfer to the defined contribution retirement plan under this chapter pursuant to rules adopted by the board.”

A strict reading of this sentence indicates that the Board is tasked with providing the opportunity to transfer and that such opportunity will be offered by rule. To place this "opportunity" in perspective, please note that subsections 1 through 4 contained very specific language that provided the procedure whereby prior eligible employees and new eligible employees were able to transfer to the DC plan from the Hybrid plan. Specifically, under subsection 1 new eligible employees were allowed to transfer to the DC plan within the first six months of employment. Having deleted the language describing the existing procedure, the new language suggests that this gap be filled by administrative rule. The reference to "an opportunity" is broad enough to apply to employees currently in the Hybrid plan for whom the opportunity to elect the transfer has previously expired and for new employees. Therefore, absent further clarifying language the Board must adopt administrative rules establishing a procedure for this transfer before it can transfer either new or existing employees into the DC plan.

Given the above requirement, PERS will need to go through the administrative rule making process, which will take to the spring of 2014. After this process is completed then PERS can begin implementation of the provisions of the proposed bill.

➤ Administrative Costs

The Bill will have an impact on the administrative resources needed for both the defined benefit plans and DC Plan because it is anticipated the Bill would add a relatively large number of new members to the DC Plan. Administrative costs may need to be reallocated from the defined benefit plans to the DC Plan over time, as membership numbers shift to the DC Plan. Initially, however, the Bill will require maintaining the administrative resources for the defined benefit plans, while increasing the administrative resources available to the DC Plan.

The board is also required to follow a specific method in offering this to new employees. This will require several mailings to members, printing the material, developing the information for the mailing (specific member transfer amounts and other specific member information), processing elections, modifications of the business system, and transferring the funds. Since the board already has a DC plan and many of the business processes in place, the estimated cost for mailings, printing, and system modifications is \$105,641. Additional appropriation will be needed for the 2013-15 biennium for these costs, or PERS will have to use its contingency line item to support these efforts.

➤ Needed Authority

The Bill appears to provide appropriate levels of administrative and governance authority to the PERS board to implement the changes made by the Bill.

➤ Integration

No impact.

➤ Employee Communications

The nature of defined contribution plans allowing participant directed investments will require additional employee education effort regarding retirement and investment planning. The need for this effort is supported by information found in a recent retirement portability study conducted by the federal Office of Management and Budget. A survey of employees indicated an overall low level of understanding of the how to invest moneys for retirement. The survey indicated a low level of understanding regarding investment categories and investment risk. Because the DC Plan will be the primary retirement vehicle for its members, it will be critical to provide these education services.

Consideration should be given to participant education, including requiring or allowing members to attend financial planning seminars and meeting with financial advisors in the work place and during working hours. Increasingly, sponsors of defined contribution plans are making available investment advisory services to assist members to invest their retirement assets prudently. There are a variety of methods for providing these education and advisory services that should be examined, including group meetings, individual counseling and technology based approaches. With a defined contribution plan, individual members are responsible for monitoring their own investment performance and making changes as appropriate. Their success or failure is a direct result of how they fulfill this responsibility.

➤ Miscellaneous and Drafting Issues

- ◆ Consideration should be given to examining the fiduciary issues surrounding defined contribution plans, including the nature of the risks associated with participant directed investments, provision of employee investment information and education, self-directed brokerage windows, financial and retirement planning and investment advisory services.
- ◆ Please note that determining the actuarial effect of this offering is dependent upon the assumed rate of acceptance. As noted earlier, it is very difficult to estimate election rates with a high level of confidence. Last biennium we estimated the cost of closing the plan when it was clear that new employees would not be joining the plan. Consequently, future participation did not need to be estimated. By contrast, future participation for purposes of this Bill need to be estimated and consequently, it needs to be understood that the actual rates could vary substantially from those estimated herein. Therefore, the actual cost could vary substantially as well. Since participation rates estimated herein are low, based upon the current environment and past experience, there is greater potential for actual costs to be higher than lower since there is more room to move higher than lower. Policy makers need to understand that future costs could be higher and would have to be addressed with additional contribution adjustments.

The projections were made using generally accepted actuarial practices and are based on demographic data as of July 1, 2012 and asset returns through July 1, 2012 and use assumptions adopted by the PERS board for the July 1, 2012 valuation, except the assumed retirement age. Calculations were completed under the supervision of Tammy Dixon, FSA, MAAA, EA.

Projections, by their nature, are not a guarantee of future results. The projections are intended to serve as estimates of future financial outcomes that are based on the information available to us at the time the projection is undertaken and completed, and the agreed-upon assumptions and methodologies described herein. Emerging results may differ significantly if the actual experience proves to be different from these assumptions or if alternative methodologies are used. Actual experience may differ due to such variables as demographic experience, the economy, stock market performance and the regulatory environment.

The information contained in this letter is provided within our role as the plan's actuary and benefits consultant and is not intended to provide tax or legal advice. We recommend that you address all issues described herein with your legal counsel. Please call if you have any questions or comments.

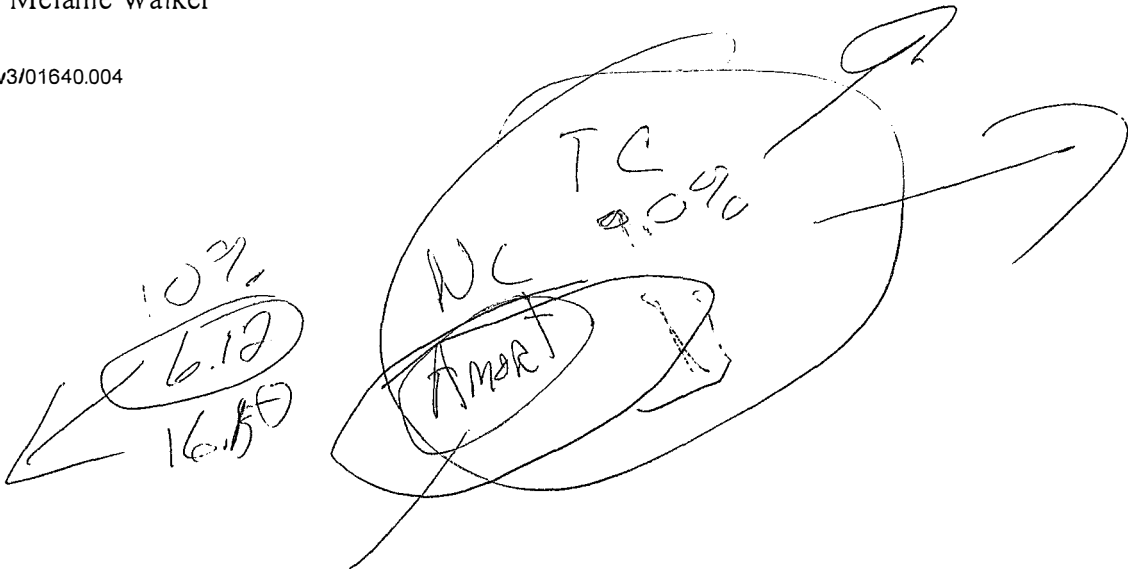
Sincerely,



Brad Ramirez, FSA, MAAA, FCA, EA
Consulting Actuary

cc: Tammy Dixon
Laura Mitchell
Melanie Walker

5232026v3/01640.004



Testimony Regarding House Bill 1452
Before the House Government and Veterans Affairs Committee
Stuart Savelkoul, Executive Director, NDPEA
January 31, 2013

Good afternoon Chairman Kasper and members of the committee. My name is Stuart Savelkoul and I am the Executive Director of the North Dakota Public Employee Association. I am here today representing the interests of public employees across the state of North Dakota including the 2,600 members of NDPEA. At first glance, this bill seems innocent enough. Its sponsors claim that our state employees should have a choice: whether to continue participation in the defined benefit plan or whether to have an individualized defined contribution plan. NDPEA has a clear position on this subject and it is one that dictates our strong opposition to House Bill 1452. Our reasons are both philosophical and fiscal in nature.

This bill, if passed, would offer the employee a choice. However, NDPEA would argue that a retirement dependent upon a DC plan is inferior in security and benefit to that provided by a DB plan. To put it simply, these options aren't equal and therefore we hope that you will give this bill an unfavorable recommendation in an effort to prevent individuals from making a choice they are likely to regret.

North Dakota's state employees have been given the option to opt out of their retirement plan in the past. During the 1980's the stock market was doing well and some people were clamoring for the opportunity to control their investments under the belief that they could outperform the pension fund. They were given this choice, and so great was the remorse that, in 1987, the legislature passed a bill that allowed them to buy their way back into the main plan. In 1999, unclassified employees were given this choice; NDPERS has evidence to show that few DC plans belonging to employees have outperformed the main plan over the last 14 years. In fact, if given the opportunity to return to the main plan, I am aware of at least 50 of those individuals who made the switch in 1999 who would take you up on the offer.

Defined Contribution Plans are inferior to Defined Benefit Plans (pensions) for several reasons:

- 401(k)s were never meant to replace pensions
- DB Plans provide secure and higher retirement benefits
- DB Plans are managed by financial experts
- DB Plans lower costs with pooled risks
- DB Plans don't age
- DB Plans boost the economy

Finally, if employees were to opt out of the main plan, this bill would have a negative fiscal impact on NDPERS. This bill has the potential to shuffle dollars away from the main plan and into these individual accounts. The report provided by Segal shows what increases will need to happen to current contributions if this bill is passed in its present form. So, in essence, every individual who makes this poor choice will, in a small way, hurt the fund that is meant to provide benefits to everyone who does not make this election.

BRANCH OFFICES

Fargo: NDPEA, AFT
3002 1st Ave N, Office #1
Fargo, ND 58102
701/232-8307
1-800-422-0236

Jamestown: NDPEA, AFT
104 1st Ave S, Suite 500
Jamestown, ND 58401
701/952-2501



Attachment 4

**TESTIMONY OF KAYLA PULVERMACHER,
NORTH DAKOTA EDUCATION ASSOCIATION
HB 1452**

January 30, 2013

Chairman Dever and members of the Committee:

My name is Kayla Pulvermacher and I'm here representing North Dakota Education Association (NDEA). I stand in opposition to 1452 as it relates to our Educational Support Professionals (ESP's) who belong to the fund.

NDEA is committed to working along with all stakeholders to preserve NDPERS. During the last session, NDEA was part of the effort behind last session's SB 2108 and this session's SB 2059, which serve as a recovery plan for NDPERS. Our concerns with the bill are similar to those of the NDPEA. Our Association believes the bill would have a negative impact on the fund and would result in NDPERS taking longer to reach its funding goals. We are also concerned the bill would not provide a secure retirement for those members that decide to choose it.

Thank you for the opportunity to address this committee on the behalf of the members of NDEA. I am available for any questions the committee may have.



Attachment 5

HB1452 – OPPOSE DEFINED CONTRIBUTION RETIREMENT PLAN

Thursday, January 31, 2013

House Government & Veterans Affairs Committee

Josh Askvig- AARP-ND

jaskvig@aarp.org or 701-989-0129

Chairman Kasper and members of the House Government & Veterans Affairs Committee, I am Josh Askvig, Associate State Director of Advocacy for AARP North Dakota. AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older, and their families, in the State of North Dakota.

AARP opposes House Bill 1452 for two key reasons:

First: this legislation offers a **lesser** benefit that costs taxpayers **more** money.

Second: House Bill 1452 has the potential to destabilize the existing defined benefit plan for those who choose to remain in the current system.

This proposal will have a drastic effect on taxpayers. The fiscal note on this measure states that this plan “would have a total biennium cost of \$28.6 million,” which has not been appropriated. Fewer members would remain in the system to pay down the unfunded liability, increasing the cost to taxpayers.

What is more concerning is the destabilization that this bill can cause by requiring lump sum distributions. If a member of the current pension plan chooses to move to a defined contribution account, PERS must transfer a lump sum to the member's individual account equal to the member's benefit obligation. This would likely require PERS to make its investments more liquid and conservative, and likely less diversified. Not only would costs for the state rise, but it would endanger benefits for public employees who elected to remain in the pension plan.

These changes are likely to lower investment returns and increase necessary contributions by the State and current employees in order to maintain and improve the funding level of the existing plans. According to the fiscal note, retirement contributions would need to be increased for the state and political subdivisions by 1.66%. Why should we ask taxpayers to pay more for a lesser and insecure benefit?

The basic principles underlying AARP's state level public pension efforts is to ensure that any reforms made to state pensions safeguard the financial security of current and near-retirees, that state and local government employees continue to have access to defined benefit plans and, finally, that retirees continue to have access to inflationary protection through the provision of cost-of-living adjustments. These principles fit within AARP's national policy agenda, which asserts that we all have a right to be self-reliant and live with dignity in retirement.

Defined benefit pension plans are a sound investment for taxpayers and vital to state economies. These plans stretch taxpayer dollars further in achieving any given level of retirement income and are able to take advantage of the enhanced investment returns that come from a balanced portfolio over long periods of time. According to the National Institute for Retirement Security, “Each \$1 in taxpayer contributions to North Dakota's state and local pension plans supported \$8.10 in total

output in the state. This reflects the fact that taxpayer contributions are a minor source of financing for retirement benefits – investment earnings and employee contributions finance the lion's share.¹

Defined benefit plans also provide an important source of institutional investments in the market that help fuel our state economy. NIRS explains that "Retiree expenditures stemming from state and local pension plan benefits supported 2,581 jobs in the state [in 2009]. To put the employment impacts of defined benefit plans in perspective, in 2009 North Dakota's unemployment rate was 4.3%. The fact that DB pension expenditures supported 2,581 jobs is significant, as it represents 0.7 percentage points in North Dakota's labor force."²

Just as a reminder: these are not lavish benefits. "The average pension benefit received [in North Dakota] was \$1,184 per month or \$14,213 per year. These modest benefits provide retired teachers, public safety personnel, and others who served the public during their working careers income to meet basic needs in retirement."³

Retirement income debates should center not only on meeting our obligations to appropriately fund the State's retirement systems, but also to provide retirement income in a way that provides the most bang for the taxpayers' buck.

Let's not forget retirement income is not a gift, its deferred income that accumulates not just from taxpayer contributions but from the deferred income employees set aside to meet their future needs. These defined benefit plans remain one of the most cost effective ways that government and its employees work together to insure against future costs for government of retirees who cannot live self-sufficiently without assistance.

While defined contribution plans are valuable to many, and are an important component to overall retirement income security as a supplemental savings vehicle, as primary retirement savings vehicles they force employees to bear most if not all investment risk, inflation risk, and the risk of outliving one's retirement nest egg. The shift of risk to individual employees in concert with other factors could leave many financially unprepared for retirement, for example:

- According to data compiled by the Federal Reserve and analyzed by the Center for Retirement Research at Boston College⁴, the median household, headed of a person aged 60 to 62 with a 401(k) account, has less than one-quarter of what is needed in that account to maintain its standard of living in retirement.
- The Employee Benefits Research Institute, which routinely estimates 401(k) plan asset allocations, account balances and loan activity, estimates in their 2010 analysis that the average 401(k) account balance was \$109,723 at year-end 2009 for those who held accounts continuously from year-end 2003 through year-end 2009, further they estimated that the median (or midpoint, half above and half below) 401(k) account balance increased to \$59,381 at year-end 2009.⁵
- According to the Current Population Survey, among the 152.6 million Americans who worked in 2010, just 49.2 percent of them had access to either a pension plan or a

¹ National Institute of Retirement Security. "Pensionomics 2012." Electronic version found: http://www.nirsonline.org/index.php?option=com_content&task=view&id=684&Itemid=48

² See above.

³ See above.

⁴ <http://crr.bc.edu/>

⁵ EBRI October 2011 Issue Brief: http://www.ebri.org/pdf/briefspdf/EBRI_IB_10-2011_No363_Ret_Part.pdf

retirement plan. Of the 75 million workers with access to a plan, 81 percent of them participated, according to the Current Population Survey.⁶

- A sizable percentage of workers have virtually no money in savings and investments. Among workers providing this type of information in for EBRI's Retirement Confidence Survey, 56 percent reported that the total value of their household savings and investments (excluding the value of their primary home and any defined benefit plans), is less than \$25,000.⁷
 - Current retirees' total savings & investments in 2011 (not including residence or DB plan) breakdown as follows:

▪ Less than \$1,000:	28%
▪ \$1,000-\$9,999:	14%
▪ \$10,000-\$24,999:	12%
▪ \$25,000-\$49,999:	6%
▪ \$50,000-\$99,999:	11%
▪ \$100,000-\$249,000:	12%
▪ \$250,000+:	17%

These facts provide a small snapshot of the lack of retirement readiness that many people face. Limited retirement savings also mean that more and more Americans are living in retirement primarily on Social Security income, so that:

- Today, more than half of all older Americans rely on Social Security for more than 50 percent of their family income; and
- 36.8% of those age 65 or older have 90% or more of their income coming from Social Security (EBRI's Craig Copeland).

In closing, I would like to emphasize that while this debate is complicated by a multitude of numbers and statistics – public pension reform is really about people – retirees, workers, their families, other taxpayers and communities. We hope that as you consider these changes that the retirement income security of system participants remains a key consideration.

⁶ See above

⁷ See above

Testimony

House Bill 1452 – Bill Kalanek, Association For Public Employees

House Government and Veterans Affairs Committee

Representative Kasper, Chairman

January 31, 2013

Chairman Kasper and members of the House Government and Veterans Affairs Committee, my name is Bill Kalanek and I am here representing the Association For Public Employees (AFPE). AFPE is a state association comprised of active and retired state employees living in communities throughout ND. On their behalf I am here to testify in opposition to House Bill 1452.

AFPE serves active and retired state employees by advocating to: 1) strengthen and maintain the existing defined benefit retirement plan 2) advocate for annuity adjustments for retirees if the financial environment allows and 3) work with the state government to improve compensation and benefits for active state employees.

It is the feeling of our membership that HB 1452 would weaken the financial position of the fund, increase liabilities and slow the recovery of the plan from the hardships endured during the last market downturn. Now that the full scope of the 2008 losses has been realized it is important that the fund be managed in a way to optimize performance, limit liabilities and progress toward the funding goals established by the legislature in 2011.

The active, retired and future members of AFPE respectfully request that you consider all costs when you deliberate on HB 1452 and give it a Do Not Pass recommendation.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1452

Page 1, line 2, replace the first "and" with a comma

Page 1, line 2, after "54-52.6-02" insert ", and 54-52.6-15"

Page 2, line 12, replace "elects to participate in the retirement plan under this chapter" with "is hired after July 30, 2013"

Page 6, line 3, remove "The board shall provide an"

Page 6, remove lines 4 and 5

Page 6, line 6, replace "pursuant to rules adopted by the board." with "At the time of hire the board shall provide an opportunity for an eligible employee to elect to participate in the defined contribution retirement plan under this chapter in lieu of the public employees retirement system under chapter 54-52, pursuant to rules adopted by the board. A new hire may exercise this election anytime from the time of hire until the expiration of thirty days following the completion of a probationary period. If an eligible employee's terms of employment do not provide for a probationary period, that eligible employee has thirty days following the first day of employment within which to exercise this election."

Page 6, line 6, remove "a member of the public"

Page 6, line 7, replace "employees retirement system under chapter 54-52 to transfer to" with "an eligible employee to participate in"

Page 6, line 8, remove "For an individual who"

Page 6, line 9, replace "elects to transfer" with "In the case of an eligible employee who makes an election after the date of hire, the election will have the effect of that eligible employee transferring"

Page 6, line 10, after the underscored comma insert "and"

Page 7, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

The board shall provide information to new hires and employees who are eligible to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter."

Renumber accordingly

TESTIMONY OF NDPERS

HOUSE BILL 1452

Mr. Chairman, members of the committee, good morning. My name is Sharon Schiermeister and I am the Chief Operating Officer of the North Dakota Public Employees Retirement System. Today I appear before you on behalf of the PERS Board and in a neutral position on this bill as long as the costs associated with this option are funded.

Pursuant to legislative requirements, our consultant, the Segal Company, has done a technical and actuarial analysis of the proposed bill. This is Attachment 1 that has been included with the testimony that was provided to you.

When the bill was discussed in the House, we offered the following Considerations, Implications and Options.

HB 1452 Considerations, Implications, Options

	Considerations	Implications	Options
1	Cost: Contributions (Option A)	Contributions will need to be increased to pay for this additional benefit or it will increase the unfunded status of the plan	Add language increasing contributions for the various retirement plans
2	Cost: Existing employee transfer	HB 1452 transfers the present value of the benefit (100% of accrued benefit); however, the plan is only funded at 65.1%. This means that for everyone that transfers out, we take a loss and the opportunity to use the earnings from their funds to close the funding gap	This can be mitigated by limiting the transfer for existing employees to the present value less the unfunded liability. This would reduce the total cost
3	Cost: New employee (Option B)	When they leave they are no longer contributing to paying the unfunded liability. This drives up the cost on those remaining	Only allow DC transfers to have the normal cost portion of the contribution (10%) and have the amount associated with the unfunded liability continue to be paid into the plan. This combined with the above would virtually eliminate the

	Considerations	Implications	Options
			incremental cost.
4	Transfer method: New employee transfer	The transfer is the present value of benefit. In all cases this will be less than the employer and employee contribution.	For new employees specify that it is the higher of contributions or present value
5	Political subdivision	They are going to be allocated part of the cost	Split the plan into two – however, this will increase the state cost substantially
6	Rules adopted by the PERS Board	PERS will not be able to implement the provision of the bill until we have gone through the rule making process. This means that it will be spring of 2014 before implementation	Leave the same or change to “policies of the board”
7	Administrative Cost	PERS has much of this in place, no new FTE are requested but mailing, printing, system modification costs, etc will be incurred (\$106,000)	Include a specific appropriation or have PERS go to its contingency line item. If contingency is to be used it would be beneficial that a statement of legislative intent be added

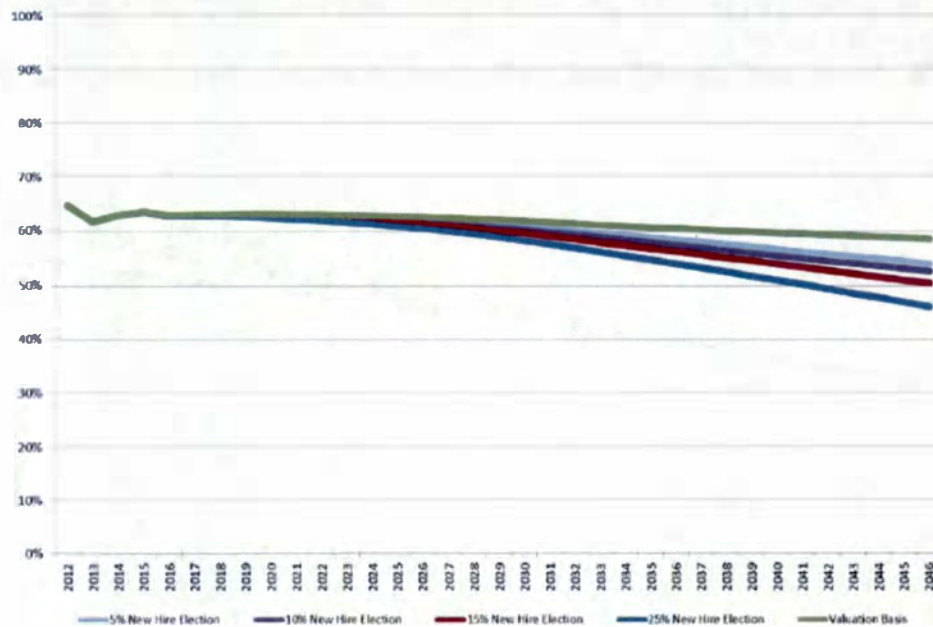
Cost Considerations (1, 2 & 3 Above)

Three cost considerations were highlighted above. Of those, the House amended out of the proposed bill item #2 which allowed existing employees to transfer to the defined contribution (DC) plan. This reduced the total cost of the bill by about 1/3.

However, the cost associated with allowing new employees to move to the DC plan was not funded. Two options were offered to fund this cost, these were #1 (Option A) and #3 (Option B) in the table above. Since neither method of funding was included for these new benefit provisions proposed in this bill, it will need to be funded from the defined benefit (DB) plan. The following table shows this effect at varying election levels. The higher the election level the greater the cost, and the lower the election level, the lower the cost. For purposes of the fiscal note, we used an election rate of 10% (this is the assumed number of new employees that would transfer to the DC plan).

The following table shows what the effect of passing this bill without funding it would have on the long term funded status of the plan at various election rates (please note the one we are using is 10% in the fiscal note):

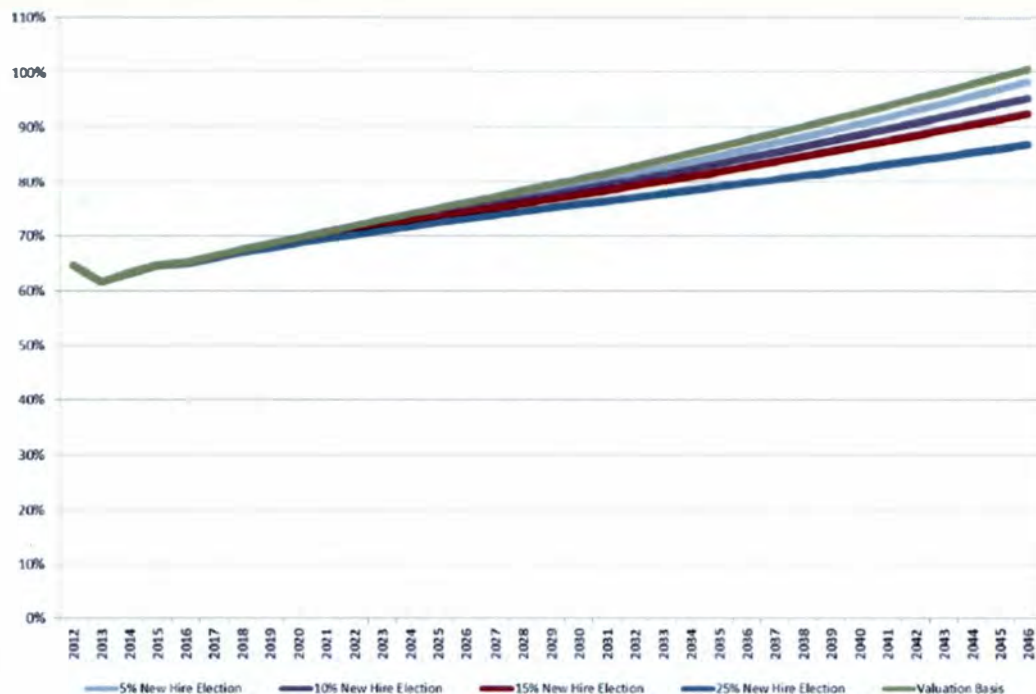
**Projected Funded Ratios Under HB 1452 without Recovery Plan
New Hires May Elect to Participate in DC Plan (with No PERS DB Contribution)
(AVA Basis) – Main System**



If passed without funding the plan, the long term status of the plan with a 10% election rate would deteriorate over time more than without this new benefit. The other election rates we used in the actuarial review are 5% and 15% election rates and they are shown above as well. To show the sensitivity of the funded status to election rates, we also added a 25% scenario (unlikely at this time).

If our recovery bill (SB 2059) is passed and this bill is passed without being funded, you can see that it would take us longer to recover.

**Projected Funded Ratios Under HB 1452 with Recovery Plan
New Hires May Elect to Participate In DC Plan (with No PERS DB Contribution)
(AVA Basis) – Main System**



As the above long term projections show, the funded status decreases if the bill is not funded with additional contributions and if the recovery bill is passed.

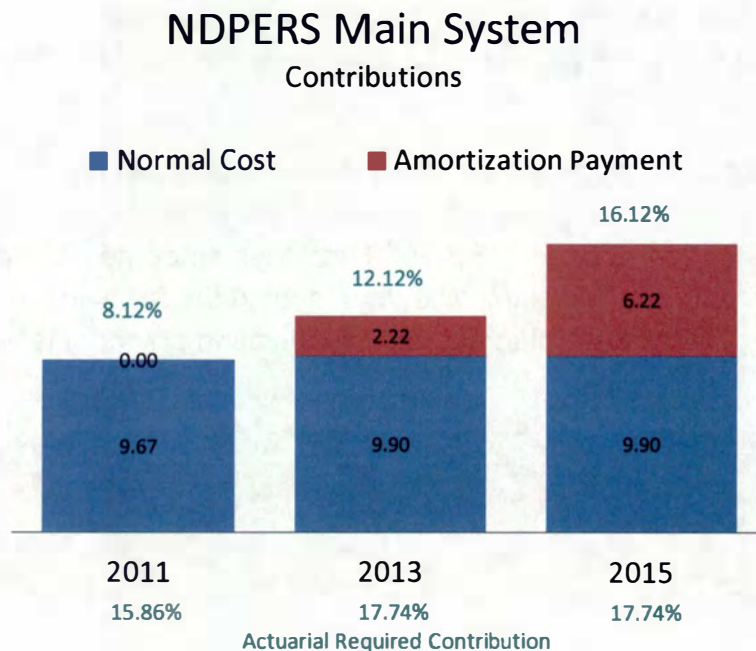
The above projections also show the sensitivity of the funding status based upon the election rate of members deciding to change from the DB/Hybrid to the DC.

As noted at the beginning, the PERS Board feels that if this bill is passed, the cost needs to be paid for and not rely on funding it from the DB/Hybrid plan. This will be a new benefit option and it has a cost. We asked our actuary what the cost of this benefit is compared to not funding another type of benefit. They indicated this is the equivalent to giving retirees a 4% increase and not funding that COLA.

The PERS Board notes that there are two methods to fund this new benefit option for state employees. The first method is Option A, which is the one identified as #1 of the considerations table above, which is to increase contributions to pay the cost of adding this additional benefit option for state employees. We have prepared an amendment to this bill that would pay this cost by changing the statutory employer contribution rates to the DB plan and appropriating money to state agencies to pay this additional amount.

This is Attachment 2 (Amendment Option A) included with the testimony. This option is similar to the fiscal note.

The second method is Option B, which is the one identified as #3 of the considerations table above, which is to make the offer to move to the DC plan actuarially neutral under the recovery plan. The reason the bill as proposed has an effect on the retirement plan recovery is that it allows the people electing the DC plan to take both the normal cost portion of the contribution and the amortization or unfunded liability portion. The way to make it actuarially neutral under the recovery plan is to make sure that the portion of the contribution for the unfunded liability that is associated with that position, continues to be paid into the DB/Hybrid plan, even though the person elects to move to the DC plan. To accomplish this, an amendment has been prepared (Attachment 3 - Amendment Option B) that establishes a uniform employer paid contribution to each system for the recovery period that will result in an amortization payment to the DB/Hybrid plan that is approximately the same as the amortization payment under the recovery plan if that bill passes. To better understand this, the following table shows how this funding is built into the retirement contributions for each position.



As the above shows there are two parts to the retirement contribution that is built into each position. The first is the normal cost and the second is the amortization payment (unfunded liability payment if needed). Until PERS had an unfunded liability, we only had a contribution that was based on the normal cost since that is the cost relating to the new benefit earned by continuing to work. That was all we needed since we had no unfunded liability. Once we got an unfunded liability, we had no funding to pay that off since the only contribution we had was for the normal cost or the cost associated with

new service. Adding that funding to each position is what the recovery plan has been about. The cost of paying off that unfunded liability is allocated to all the eligible positions in the plan. The more positions to allocate the cost over, the less it is per position and conversely the smaller the number of positions the greater the cost. (Example: \$10 in unfunded liability spread across 20 positions is .50 cents per position; \$10 in unfunded liability spread across 10 positions is \$1 per position)

The cost associated with the DC option as proposed is that it allocates to the new DC plan members who elect to leave the DB/hybrid plan both the normal cost and the amortization payment. Taking the amortization payment away from the DB plan for each member leaving for the DC plan means that the total amortization payment to the DB plan will be less (i.e. - the payment was designed around paying off the \$10 unfunded liability with 20 positions making payments of .50 cents, however you now only have 10 positions paying .50 cents). In Option A above, what we are doing is increasing contributions for those remaining in the DB plan to a higher amount to generate the same total payment (\$10 unfunded liability with only 10 members remaining means the payment needs to increase from .50 cents to \$1). In Option B what we are doing is leaving the amortization payment associated with that position with the DB plan and basing the contribution to the DC plan on the normal cost. This approach makes the cost of offering the DC option neutral to the DB plan and the fiscal note would go to "0" except for the PERS administrative costs.

The attached Amendment Option B to implement this is developed based upon the assumption that SB 2059 is passed. It sets the amount of the amortization payment that would stay with the DB plans to that needed in SB 2059 and then smoothes it back in the employer contribution level for the DC plan. With that in mind the following is the amount that would be in DC plan for each plan and the amortization payment left in the DB plans:

	PERS Main Plan			JudgesPlan			BCI Law Plan			GuardPlan			Law Plan w/ Prior			Law Plan w/o Prior		
	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015
Neutral costDC (total contribution)	8.00%	9.00%	10.00%	16.50%	17.50%	18.50%	10.00%	10.00%	10.00%	9.00%	9.50%	10.00%	9.00%	9.50%	10.00%	9.00%	9.50%	10.00%
Employer Pd	6.00%	6.00%	6.00%	13.50%	13.50%	13.50%	8.00%	8.00%	8.00%	9.00%	9.00%	9.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Employee OOP	2.00%	3.00%	4.00%	3.00%	4.00%	5.00%	2.00%	2.00%	2.00%	0.00%	0.50%	1.00%	1.00%	1.50%	2.00%	1.00%	1.50%	2.00%
Emp Amortization Pmt to PERS Main Plan *	4.12%	5.12%	6.12%	7.02%	8.02%	9.02%	6.31%	7.31%	8.31%	1.50%	2.00%	2.50%	5.31%	6.31%	7.31%	3.43%	4.43%	5.43%
Total Employer Ret Cont	10.12%	11.12%	12.12%	20.52%	21.52%	22.52%	14.31%	15.31%	16.31%	10.50%	11.00%	11.50%	13.31%	14.31%	15.31%	11.43%	12.43%	13.43%

Option B has the least risk to the recovering DB plan, and if it is decided to move ahead with the provisions of this bill, this would be the option PERS would recommend to pay for the cost. However, please note that as we discussed in SB 2059 we feel that the DC plan needs to get to a contribution level of 16%-20% to provide an adequate retirement benefit based upon our experience with our existing DC plan. Our existing plan has had a contribution level of about 8.12% until this biennium and based upon the Segal reviews, has not produced an equivalent or adequate retirement benefit. The levels proposed here do not accomplish this objective and would need to be addressed in the future.

Transfer Method (#4 Above)

The transfer method discussed above was changed to a lump sum.

Political Subdivision (#5 Above)

As noted above political subdivision employees do not get this new benefit option. If they did, the cost would be higher. However, since they are in the same pool with state employees the cost of this provision will affect them as well. This is noted on the fiscal note. If funding Option A is used, political subdivision employers will have to pay part of the cost of this new benefit option even though their employees will not get it. However, if funding Option B is used, this will not happen and the political subdivisions will not be assessed any costs of adding this option for state employees. This is another reason why the PERS Board would suggest funding Option B.

Rules Adopted by the PERS Board (#6 Above)

As noted above, the bill as proposed would require the PERS Board to adopt rules before we could implement its provisions. Consequently, it would be the spring or summer of 2014 before we could offer its provisions to new employees. We would suggest changing to “administrative policies or rules” adopted by the PERS Board. We have included this in our administrative amendments which is Attachment 4 – Administrative Amendment.

Administrative Cost (#7 Above)

As originally proposed we identified the following additional costs to NDPERS:

NDPERS Administrative Costs HB 1452

	Amount
Communication materials (printing/mailing)	\$48,641
Informational meetings	\$3,000
Enhancements to business system	<u>\$54,000</u>
TOTAL	\$105,641

No administrative funding was provided by the House. Consequently, we are requesting an appropriation in each of the attached amendments.

As a result of the change made by the House to not offer this option to existing employees, our administrative costs will decrease. For Option A, we anticipate the administrative costs for will be \$22,000. For Option B, we anticipate the administrative

costs will be \$76,000. We have also included an appropriation for administrative costs of \$22,000 in our administrative amendment.

Other Miscellaneous Amendments

1. In the final amendments to the House, some timeframes were added for employees to make their elections. These timeframes conflict with our ability to meet other requirements in the statute. Therefore, we are recommending that the original timeframes be restored. This change has been included in our administrative amendment.
2. Upon reflection, we feel we will be challenged to get this expanded program off the ground by July 1, 2013 if the amendment is accepted relating to the rule making process. As noted above, if this amendment is not accepted and the bill is passed, we would not be implementing this bill's provisions until the spring or summer of 2014. But if our administrative amendment is accepted and passed, we would have a July 1, 2013 starting date which would be challenging. Therefore, in recognition of this, we are requesting that the effective date of this bill be October 1, 2013. This change is also included in our administrative amendment.

Summary

In summary, NDPERS is neutral on this bill if the new benefit provisions are funded. We have offered two options to fund the bill. Option A would increase contributions to pay the cost of the bill. The only concern with this option is that the cost for political subdivisions would go up and they would not have this option. Also if participation is higher than 10%, the increased contributions would not cover the cost. The cost of this option is reflected on the fiscal note. We have also offered Option B. This would get rid of the cost on the fiscal note (except PERS admin). This option has a lower cost since the funds allocated to those positions for paying off the unfunded liability in PERS would continue to be made to the DB plan, even if the member elects to go to the DC plan. This option also does not affect political subdivisions and would pay the cost no matter how many members elect to change to the DC plan.

Lastly, we would request that our administrative amendment be added to the bill in addition to Option A or B. If you elect not to fund the bill but move it forward, we would still ask that the administrative amendments be added.

Mr Chairman, members of the committee this concludes my testimony and thank you.



Attachment 1

5670 Greenwood Plaza Boulevard Suite 425 Greenwood Village, CO 80111-2499
T 303.714.9900 F 303.714.9990 www.segalco.com

January 28, 2013

Mr. Sparb Collins
Executive Director
State of North Dakota Public Employees' Retirement System
400 East Broadway, Suite 505
P.O. Box 1657
Bismarck, ND 58502

Re: Technical Comments – HB 1452

Dear Sparb:

The following presents our analysis of the proposed changes found in draft HB 1452:

Systems Affected: North Dakota Public Employees Retirement System (PERS) Hybrid Plan and Defined Contribution Plan (DC Plan)

Summary: The proposed legislation would provide State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board. Existing employees who elect to participate in the Defined Contribution Plan will have a lump sum transferred from the Hybrid Plan to an individual account in the Defined Contribution Plan. The lump sum amount shall be the actuarial value of the individual member's accumulated benefit obligation in the Hybrid Plan, based on the assumption that the member will retire at the earliest applicable normal retirement age. Such transfer will not affect the member's health benefits or retiree health benefits.

Actuarial Cost and Technical Analysis: This Bill would have a material actuarial impact on the assets and liabilities of the Hybrid Plan, as follows:

The Bill would allow current participants to elect to transfer the full amount of their Hybrid Plan Actuarial Accrued Liability to the Defined Contribution Plan. Since the Hybrid Plan is currently less than 100% funded, this would result in a transfer of assets greater than the assets that currently support the benefits. As a result, contribution requirements for those who remain in the Hybrid Plan will see an increase in costs, as they would pay for the unfunded portion of the benefits of the transferring participants.



It is difficult to predict which participants would elect to transfer under this Bill. Experience over the last ten years would indicate that 16% of those new hires eligible to choose between the Hybrid Plan and the Defined Contribution Plan at date of hire choose the Defined Contribution Plan. More recent election rates have been lower, around 7.8%. It is also difficult to predict what existing employees may do when offered this election. When offered to nonclassified employees in 1999, about 38% elected to transfer. However, the environment has changed substantially since then, so we expect the rate would be lower.

Our understanding is that the Bill would allow current participants a one-time election to transfer out of the Plan and new employees the option to choose between the Hybrid Plan and the Defined Contribution Plan at date of hire. Because it is difficult to predict the number of participants that would transfer, we have illustrated the effects of three scenarios on the employer cost rate as a percentage of projected payroll. In the first scenario, we have assumed that 10% of existing participants leave and 5% of the new employees elect the Defined Contribution Plan each year thereafter. In the second scenario, we have assumed that 15% of participants leave and 10% of the new employees elect the Defined Contribution Plan each year thereafter. In the third scenario, we have assumed that 20% of participants leave and 15% of the new employees elect the Defined Contribution Plan thereafter. These will increase the costs of funding the ongoing benefits and the unfunded liability as a percent of pay, as follows:

Group	Employer Cost Rate – 2012 Actuarial Valuation	Statutory Employer Cost Rate – 2013	(1) 10%/5% Assumption– Resulting Cost Rate	(2) 15%/10% Assumption– Resulting Cost Rate	(3) 20%/15% Assumption– Resulting Cost Rate
PERS Main*	12.24%	6.12%	13.19%	13.90%	14.66%
Judges	16.33%	16.52%	17.29%	17.97%	18.76%
Law Enforcement w/Prior Service**	10.69%	9.31%	11.10%	11.45%	11.81%
National Guard	7.40%	6.50%	7.67%	7.86%	8.09%

*Only Main State employees would be allowed to transfer under the Bill

**Only BCI employees would be allowed to transfer under the Bill

The Bill specifies that the Actuarial Accrued Liability be calculated assuming that the transferring participant will retire at the earliest unreduced retirement date. This is a slightly more conservative measure than the assumption used for funding the Hybrid Plan, and would result in a larger transfer of funds than if the Plan's valuation assumptions were used. For participants with lower service, the benefits calculated under the Plan formula will likely have a smaller present value than the participant's vested contributions. In this case, we calculated the amount of the transfer to simply be the balance of vested contributions with interest.

As mentioned above, the Bill provides that 100% of the liability be transferred for these participants. If the Bill were altered so that only the funded portion of the participants' Actuarial Accrued Liability is transferred to the Defined Contribution plan (64.7% for the PERS Main Plan as of July 1, 2012), the Resulting Employer Cost Rate for ongoing Hybrid Plan participants would be as follows:

As above, in the first scenario, we have assumed that 10% of participants leave and 5% of the new employees elect the Defined Contribution Plan each year thereafter. In the second scenario, we have assumed that 15% of participants leave and 10% of the new employees elect the Defined Contribution Plan each year thereafter. In the third scenario, we have assumed that 20% of participants leave and 15% of the new employees elect the Defined Contribution Plan thereafter. These will increase the costs of funding the ongoing benefits and the unfunded liability as a percent of pay, as follows:

Group	Funded Percentage	Employer Cost Rate – 2012 Actuarial Valuation	Employer Cost Rate – Ultimate Statutory Rates	(1) 10%/5% Assumption– Resulting Cost Rate	(2) 15%/10% Assumption– Resulting Cost Rate	(3) 20%/15% Assumption– Resulting Cost Rate
PERS Main*	64.7%	12.24%	6.12%	12.82%	13.30%	13.81%
Judges	89.8%	16.33%	16.52%	16.94%	17.40%	17.91%
Law Enforcement w/Prior Service**	64.9%	10.69%	9.31%	10.95%	11.21%	11.48%
National Guard	91.6%	7.40%	6.50%	7.59%	7.74%	7.90%

*Only Main State employees would be allowed to transfer under the Bill

**Only BCI employees would be allowed to transfer under the Bill

If the participants are given a choice of participation in either the current Hybrid Plan or the Defined Contribution Plan, the risk of antiselection will be introduced to the System. Antiselection risk is the tendency of participants to select the choice that benefits them the most. For example, participants who may be less healthy than average may be more likely to elect to transfer to the Defined Contribution Plan, which would allow for a faster payout of benefits than the lifetime payments offered by the Hybrid Plan. This effect could result in more costly benefits for the Hybrid Plan than otherwise would be expected, and will increase the volatility of contribution requirements. That is, if the election rates are higher than expected, it will increase required contributions for the Hybrid Plan. If lower, it could reduce requirements. This same situation would occur even if total election rates are lower, but those electing have higher than expected costs.

Technical Comments: Our comments on the Bill are as follows:

General

The Bill would provide a new opportunity for existing members to make a one-time irrevocable election as to whether they will participate in a defined benefit plan or defined contribution plan, including members who have not previously had an opportunity to participate in the Defined Contribution Plan, such as judges. In addition, the Bill could have an impact on PERS, to the extent a large number of employees elect to transfer into the DC Plan, in the following areas:

- Similarly situated employees would have different levels and forms of retirement benefits;
- The proposed changes could have an impact on the funding status of the defined benefit plans; and
- The role of the PERS in administering retirement benefits for State employees could shift as a result of a large increase in the number of DC Plan participants.

Benefits Policy Issues

➤ Adequacy of Retirement Benefits

- ◆ **Replacement Ratio:** In comparison to members in the current defined benefit plans, the replacement ratios of income by retirement benefits for new members in the DC Plan are expected to decrease from that which is currently provided for several reasons, including the following.
 - In practice, individually-managed accounts can expect lower investment returns than a longer time horizon, professionally-managed defined benefit fund.
 - Defined contribution accounts suffer from “leakage” as funds are used for purposes other than retirement.
 - There is a higher cost of annuitization at market annuity rates, or else members must assume longevity risk on top of investment risk.

In a letter dated December 7, 2011, we provided updated analysis of how benefits under the defined benefit plans compare to benefits under the DC Plan. It showed that the contribution rate for the DC Plan would need to be increased in order to provide a benefit that is comparable to the current defined benefit plans. Specifically the analysis shows the following for individuals who are presently in the DC Plan established in the late 1990's:

1. DC Plan participants are projected to have a retirement benefit that is on average 50% less than what they would have had if they stayed in the applicable defined benefit plan.
2. DC Plan contributions will need to increase to 16.5% to 20% to provide a benefit similar to the current defined benefit plans (under the Hybrid Plan a 25-year employee would receive 50% of their final average salary).

3. The benefit provided in the existing DC Plan is not providing a benefit comparable to the defined benefit plans at the existing contribution levels.
 4. The DC Plan does not provide the same level of spouse or disability benefits as the defined benefit plans.
- ◆ *Retirement Savings:* The nature of the DC Plan with lump sum benefit payments may decrease the amount of a member's retirement benefit that will be available for retirement to the extent it is used for current consumption. Employee Benefit Research Institute (EBRI) statistics indicate that because of this "leakage" effect, less than 100% of employer contributions will actually be used to provide retirement benefits. Based upon the EBRI study entitled "Reported Uses for Any Portion of Lump-sum Distributions", the average amount of distributed funds retained in retirement vehicles (tax-qualified financial savings) is 41.5%. Seventeen percent is saved, and the remainder (41.5%) is used for debt, education or consumption. Forty-six percent of these individuals rolled over at least some of the money into another retirement plan and 27% put some of the money into other savings investments. Because of this "leakage" effect, less than 100% of the employer contributions will actually be used to provide retirement benefits. Nationally, 58.5% of any lump sum distribution is not used for retirement purposes. The current defined benefit plans have minimal leakage of employer contributions.

On average, refund payments under the PERS are approximately 24% of the employee contributions. Of these refunds, 58.5% will be used for non-retirement purposes if the national statistics are applied. Thus, the leakage rate on employee contributions is estimated to be about 14% per year.

If these patterns of refunds and uses of lump sum distributions remain unchanged, the leakage rate on employer contributions under the DC Plan could be presumed to be 14%. For every \$1,000,000 of employer contributions accumulated, about \$140,000 will not be available for retirement purposes.

- ◆ *Personal savings:* Participation in a defined contribution plan may increase interest of members to save for retirement because of the participant directed investment feature and the awareness that it is important to save for their own early retirement or post-employment inflation protection. However, the State's DC Plan does not provide any separate monetary incentive or opportunity to increase personal savings. The PERS Main System added the Portability Enhancement Provision (PEP) in 1999. One aspect of this provision is to create an incentive for members to engage in supplemental retirement savings. Specifically, this feature provides that if a member participates in the State's deferred compensation plan, they will vest in the employer contribution in the Hybrid Plan. This provision has helped to encourage participation in the supplemental savings plan and has been successful at enhancing the overall retirement preparedness for those participants. The proposed DC Plan would not have a similar defined benefit incentive to encourage participation.

➤ Benefits Equity and Group Integrity

- ◆ Since members of the Highway Patrolmen's Retirement System (HPRS) do not have the opportunity to elect between a defined benefit plan and a defined contribution plan, there is an inequity of benefits and choice of plans between HPRS and the PERS Main System.
- ◆ Allowing most State employees to elect between a defined benefit plan and a defined contribution plan alleviates the current benefits equity problem whereby two similarly situated State employees who perform similar services, one which must participate in the defined benefit plan and the other which may participate in a defined contribution plan or a defined benefit plan, have very different retirement benefits. However, this Bill does not create benefit equality because two employees with identical positions, age and service who elect different retirement plans may still have unequal retirement benefits.
- ◆ The benefits equity issue whereby different retirement plans are elected highlights the importance of the educating State employees on the different aspects of defined benefit versus defined contribution plans, as well as the various risks and rewards of each type of plan, and may lead to increased scrutiny of the PERS decisions with respect to both the investment of the defined benefit plan funds and the investment choices offered under the DC Plan.
- ◆ In addition, we note that nonvested defined benefit plan members who transfer to the DC Plan may be immediately increasing their vesting percentage in their pension benefits compared to similar employees who do not transfer.
- ◆ This Bill is providing all members who elected not to transfer to the DC plan back in 1999 a second election opportunity. However, those that elected to transfer are not similarly offered a second election opportunity.
- ◆ This PERS group is composed of state employees and political subdivision employees. This option is provided to state employees and not to political subdivision employees. This reduces the cost of offering this option, but since the cost is amortized over the entire group, political subdivisions are a prorated part of the cost for this option for State employees.

➤ Competitiveness

The DC Plan design increases the ability of shorter-term employees to earn and retain a valuable retirement benefit. The PERS Main System Portability Enhancement Provision (PEP) also offers similar benefits, which can be a valuable tool for attracting such employees. The DC Plan, however, may be less competitive for career employee positions compared to other public employee retirement plans. These changes could motivate job mobility and increase turnover. This may or may not be desirable depending on the workforce issues facing the employer.

In another sense, the Bill will be following the trend among smaller private sector employers and some larger private employers to use defined contribution plans instead of defined benefit arrangements as a primary vehicle for retirement benefits. However, other larger

private sector employers and most public sector employers have continued to maintain a combination plan structure - a core defined benefit plan with a supplemental set of defined contribution and/or profit sharing arrangements.

➤ Purchasing Power Retention

A defined contribution plan does not provide guaranteed purchasing power retention after benefits are distributed. The ability to maintain purchasing power will depend solely on the investment performance of the distributed assets. It is not possible under current federal tax laws to directly provide post-retirement increases for defined contribution plan retirees. Similarly, the existing plan does not guarantee purchasing power retention, and in a high inflation economy, may be subject to a significant reduction unless legislative action is taken to adjust the benefits.

➤ Preservation of Benefits

A defined contribution plan can work well to preserve the value of benefits for former members but actual preservation of such values will depend on the investment performance on the amounts distributed. To the extent benefits are not invested adequately or not saved at all for retirement purposes, then the ability to preserve the value of the retirement benefits is diminished.

In July 2009, the federal Government Accountability Office (GAO) published a report that found workers face a number of risks in both accumulating and preserving pension benefits. The GAO found, in relevant part, that workers that receive lump sum distributions, in particular, face several risks related to how they withdraw their benefits, including:

- ◆ *Longevity risk:* Retirees may draw down benefits too quickly and outlive their assets. Conversely, retirees may draw down their benefits too slowly, unnecessarily reduce their consumption, and leave more wealth than intended when they die.
- ◆ *Investment risk:* Assets in which retirement savings are invested may decline in value.
- ◆ *Inflation risk:* Inflation may diminish the purchasing power of a retiree's pension benefits.

➤ Portability

The Bill generally provides a high degree of portability of retirement benefits for State employees who participate in the DC Plan, since their entire benefit is available for distribution or rollover after termination of employment. Note that with the PEP the existing defined benefit plan also has a significant level of portability, but not to the same level.

➤ Transfer Methodology

On page six of the Bill, the transfer calculation is specified. This means the amount to be transferred will be the greater of employee contributions with interest and the lump sum value of the vested benefit calculated at the participant's earliest unreduced retirement age. For younger and lower service employees, this will generally be the contributions with interest.

Calculations will be required for existing participants considering a transfer. Staff will either need to request these calculations from the actuary, or establish an internal system to calculate these amounts.

➤ Ancillary Benefits

- ◆ Pre-retirement death benefits and disability benefits provided under a defined contribution plan would generally be less than similar benefits provided under a defined benefit plan structure because defined contribution plan benefits depend on the total amount of contributions made and investment performance of assets, while defined benefit plan benefits are not contingent upon such factors. Specifically:
 1. The Hybrid Plan provides for a disability retirement benefit of 25% of final average salary calculated at the date of disability. A member is eligible for this after six months of participation in the system. The DC Plan would offer no other disability benefits other than the account balance at the date of disability, which in most cases would be much less than the current Hybrid Plan disability benefit. Many employers provide disability insurance benefits to employees, which offsets the need for this in the retirement plan. It is our understanding the State does not currently provide employer paid disability insurance to its employees, meaning that under the Bill disability benefits would be less than State employees currently receive under the Hybrid Plan.
 2. The Hybrid Plan provides benefits for the surviving spouse whereby the spouse has three choices: 1) a lump sum payment of the member contributions with interest, 2) lifetime payment of monthly benefit equally to 50% of the deceased member's accrued single life benefit, or 3) if the member at death was eligible for a normal retirement benefit, the spouse can select a benefit equal to the member's 100% joint and survivor annuity benefit. In the DC Plan, the spouse would be eligible to receive a lump payment of the account balance only. Generally, the DC Plan benefit would be significantly less than the spouse benefits in the Hybrid Plan. Many employers do have employer paid life plans that offset the need for this benefit in the retirement plan. In the DC Plan, a death benefit could be added or the State could provide expanded life insurance coverage to provide for the surviving spouse; otherwise, the Bill would result in lower death benefits for State employees than are provided by the current Hybrid Plan.
- ◆ The defined benefit plans have from time to time, provided for retiree increases over time with ad hoc adjustments. This has occurred as a result of favorable plan experience and when the plan's funding situation has allowed. Given the present challenges it is unlikely that the fund will be able to support any ad hoc adjustments until the plan's funding challenges are overcome. If the proposed recovery plan is fully adopted, this will not occur until approximately 2040-2045. However, at some future date it is possible that the plans may reach a funded level that would allow it to again provide ad hoc adjustment to retirees.

The DC Plan does not provide for sharing of favorable plan experience among members, nor does it specifically provide for ad hoc adjustments to retirees. However, for any members in the DC Plan that realize favorable investment experience, they are able to benefit from what would generally be comparable to an ad hoc adjustment. If the State

has a wish to someday provide retiree adjustments, a new process would need to be identified.

- ◆ Social Security: No impact.

Funding Policy Issues

> Actuarial Impacts

As previously noted, the Bill will have an actuarial impact on the Hybrid Plan.

- ◆ The Bill will have an immediate effect on the actuarial contribution requirement.
- ◆ The Bill will not provide for a change in the statutory contribution rate.
- ◆ While the resulting Employer Cost Rate will be higher, the total contribution amount will be lower.

> Investment Impacts

- ◆ Depending on the performance of the capital markets and the investment choices made by members, new employees participating in the DC Plan may experience greater, or, more likely, lesser benefits than those provided under the current Hybrid Plan. The risk of loss or gain is borne by the member. No significant changes are required in the Hybrid investment practices as a result of this change. However, if a large portion of participants leave the plan, it may force a change in investment decisions.
- ◆ *Cash Flow*: In general, the Bill will cause cash flows under the defined benefit plans to be altered as membership decreases in the defined benefit plans as currently anticipated. This will impact cash flow needs for funding and benefit payments under the plan. These changes are projected to impact the overall funding of the plans for the future, as previously described. It may be desirable to conduct asset-liability and cash flow studies to better predict the outcomes for the defined benefit plans.
- ◆ *Asset Allocation*: The Bill should not create significant new investment asset allocation issues for the defined benefit plans under the PERS as the amount of new contributions to the plans decreases relative to the amount of benefit payments from the plans.

Administration Issues

> Implementation Issues

In order for this Bill to be implemented, Section 3 of HB 1452 amends NDCC 54-52.6-02 by deleting subsections 1 through 4 and introducing the following language:

“The board shall provide an opportunity for members of the public employees retirement system under chapter 54 - 52 to transfer to the defined contribution retirement plan under this chapter pursuant to rules adopted by the board.”

A strict reading of this sentence indicates that the Board is tasked with providing the opportunity to transfer and that such opportunity will be offered by rule. To place this "opportunity" in perspective, please note that subsections 1 through 4 contained very specific language that provided the procedure whereby prior eligible employees and new eligible employees were able to transfer to the DC plan from the Hybrid plan. Specifically, under subsection 1 new eligible employees were allowed to transfer to the DC plan within the first six months of employment. Having deleted the language describing the existing procedure, the new language suggests that this gap be filled by administrative rule. The reference to "an opportunity" is broad enough to apply to employees currently in the Hybrid plan for whom the opportunity to elect the transfer has previously expired and for new employees. Therefore, absent further clarifying language the Board must adopt administrative rules establishing a procedure for this transfer before it can transfer either new or existing employees into the DC plan.

Given the above requirement, PERS will need to go through the administrative rule making process, which will take to the spring of 2014. After this process is completed then PERS can begin implementation of the provisions of the proposed bill.

➤ Administrative Costs

The Bill will have an impact on the administrative resources needed for both the defined benefit plans and DC Plan because it is anticipated the Bill would add a relatively large number of new members to the DC Plan. Administrative costs may need to be reallocated from the defined benefit plans to the DC Plan over time, as membership numbers shift to the DC Plan. Initially, however, the Bill will require maintaining the administrative resources for the defined benefit plans, while increasing the administrative resources available to the DC Plan.

The board is also required to follow a specific method in offering this to new employees. This will require several mailings to members, printing the material, developing the information for the mailing (specific member transfer amounts and other specific member information), processing elections, modifications of the business system, and transferring the funds. Since the board already has a DC plan and many of the business processes in place, the estimated cost for mailings, printing, and system modifications is \$105,641. Additional appropriation will be needed for the 2013-15 biennium for these costs, or PERS will have to use its contingency line item to support these efforts.

➤ Needed Authority

The Bill appears to provide appropriate levels of administrative and governance authority to the PERS board to implement the changes made by the Bill.

➤ Integration

No impact.

➤ Employee Communications

The nature of defined contribution plans allowing participant directed investments will require additional employee education effort regarding retirement and investment planning. The need for this effort is supported by information found in a recent retirement portability study conducted by the federal Office of Management and Budget. A survey of employees indicated an overall low level of understanding of the how to invest moneys for retirement. The survey indicated a low level of understanding regarding investment categories and investment risk. Because the DC Plan will be the primary retirement vehicle for its members, it will be critical to provide these education services.

Consideration should be given to participant education, including requiring or allowing members to attend financial planning seminars and meeting with financial advisors in the work place and during working hours. Increasingly, sponsors of defined contribution plans are making available investment advisory services to assist members to invest their retirement assets prudently. There are a variety of methods for providing these education and advisory services that should be examined, including group meetings, individual counseling and technology based approaches. With a defined contribution plan, individual members are responsible for monitoring their own investment performance and making changes as appropriate. Their success or failure is a direct result of how they fulfill this responsibility.

➤ Miscellaneous and Drafting Issues

- ◆ Consideration should be given to examining the fiduciary issues surrounding defined contribution plans, including the nature of the risks associated with participant directed investments, provision of employee investment information and education, self-directed brokerage windows, financial and retirement planning and investment advisory services.
- ◆ Please note that determining the actuarial effect of this offering is dependent upon the assumed rate of acceptance. As noted earlier, it is very difficult to estimate election rates with a high level of confidence. Last biennium we estimated the cost of closing the plan when it was clear that new employees would not be joining the plan. Consequently, future participation did not need to be estimated. By contrast, future participation for purposes of this Bill need to be estimated and consequently, it needs to be understood that the actual rates could vary substantially from those estimated herein. Therefore, the actual cost could vary substantially as well. Since participation rates estimated herein are low, based upon the current environment and past experience, there is greater potential for actual costs to be higher than lower since there is more room to move higher than lower. Policy makers need to understand that future costs could be higher and would have to be addressed with additional contribution adjustments.

The projections were made using generally accepted actuarial practices and are based on demographic data as of July 1, 2012 and asset returns through July 1, 2012 and use assumptions adopted by the PERS board for the July 1, 2012 valuation, except the assumed retirement age. Calculations were completed under the supervision of Tammy Dixon, FSA, MAAA, EA.

Mr. Sparb Collins
January 28, 2013
Page 12

Projections, by their nature, are not a guarantee of future results. The projections are intended to serve as estimates of future financial outcomes that are based on the information available to us at the time the projection is undertaken and completed, and the agreed-upon assumptions and methodologies described herein. Emerging results may differ significantly if the actual experience proves to be different from these assumptions or if alternative methodologies are used. Actual experience may differ due to such variables as demographic experience, the economy, stock market performance and the regulatory environment.

The information contained in this letter is provided within our role as the plan's actuary and benefits consultant and is not intended to provide tax or legal advice. We recommend that you address all issues described herein with your legal counsel. Please call if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'BRAMIREZ', followed by a horizontal line.

Brad Ramirez, FSA, MAAA, FCA, EA
Consulting Actuary

cc: Tammy Dixon
Laura Mitchell
Melanie Walker

5232026v3/01640.004

Attachment 2

Amendment Option A

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1452

Page 1, line 1, after "sections" insert "54-52-06, 54-52-06.1,"

Page 1, line 3, delete "and"

Page 1, line 5, after "system" insert "; to provide an appropriation; and to provide an effective date"

Page 1, after line 21, insert"

"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.

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, and ~~with an additional increase of~~ by one percent, beginning with the reporting period of January 2013, and by one and six-hundredths percent, beginning with the reporting period of October 2013. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 3. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ by one percent, beginning with the reporting period of January 2013, and by one and seven-hundredths percent, beginning with the reporting period of October 2013. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution."

Page 2, line 11, after "plan" insert "who elects to participate in the retirement plan under this chapter"

Page 2, line 12, remove "who is hired after July 30, 2013"

Page 8, after line 8, insert

"SECTION 8. APPROPRIATION. The funds provided in this section, or so much as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the following departments for the purpose of defraying the cost of the additional employer retirement contributions necessary to pay the cost for the provisions of this bill for the biennium beginning July 1, 2013 and ending June 30, 2015, as follows:

	Department	General	Other
101	Office of the Governor	\$23,619	\$0
108	Office of the Secretary of State	\$25,882	\$815
110	Office of Management and Budget	\$115,275	\$23,429
112	Information Technology Department	\$66,636	\$387,982
117	Office of the State Auditor	\$51,598	\$17,427
120	Office of the State Treasurer	\$8,715	\$0
125	Office of the Attorney General	\$195,136	\$43,231
127	Office of the Sate Tax Commissioner	\$138,399	\$0
140	Office of Administrative Hearings	\$0	\$7,439
160	Legislative Council	\$48,920	\$0
180	Judicial Branch	\$484,250	\$0
188	Legal Counsel of Indigents	\$38,673	\$1,199
190	Retirement and Investment Office	\$0	\$25,004
192	Public Employees Retirement System	\$0	\$34,620
201	Department of Public Instruction	\$33,457	\$74,799
215	North Dakota University System Office	\$25,308	\$0
226	State Land Department	\$0	\$36,541
227	Bismarck State College	\$33,315	\$6,039
228	Lake Region State College	\$16,424	\$2,700
229	Williston State College	\$8,748	\$4,720
230	University of North Dakota	\$169,875	\$164,822
232	UND School of Medicine and Health Services	\$35,537	\$19,016
235	North Dakota State University	\$143,594	\$83,544
238	North Dakota State College of Science	\$55,164	\$7,745
239	Dickinson State University	\$27,625	\$2,562
240	Mayville State University	\$11,920	\$8,844
241	Minot State University	\$44,596	\$7,637
242	Valley City State University	\$19,402	\$1,456
243	Bottineau College	\$8,442	\$1,264
244	North Dakota Forest Service	\$6,858	\$0
250	State Library	\$22,484	\$2,086
252	School for the Deaf	\$40,936	\$1,623
253	N.D. Vision Services	\$26,394	\$1,614
270	Dept of Career and Technical Ed	\$31,988	\$819
301	North Dakota Department of Health	\$200,114	\$170,620
305	Tobacco Prevention	\$0	\$6,079
313	Veterans Home	\$88,294	\$0
316	Indian Affairs Commission	\$5,656	\$0
321	Department of Veterans Affairs	\$6,466	\$0
325	Department of Human Services	\$1,428,893	\$647,289
360	Protection and Advocacy Project	\$31,648	\$0
380	Job Service North Dakota	\$2,219	\$244,694

401	Office of the Insurance Commissioner	\$0	\$55,039
405	Industrial Commission	\$108,472	\$9,507
406	Office of the Labor Commissioner	\$13,244	\$0
408	Public Service Commission	\$36,421	\$21,435
412	Aeronautics Commission	\$0	\$7,830
413	Department of Financial Institutions	\$0	\$42,027
414	Office of the Securities Commissioner	\$11,672	\$0
471	Bank of North Dakota	\$0	\$191,948
473	North Dakota Housing Finance Agency	\$0	\$49,699
475	North Dakota Mill & Elevator Association	\$0	\$121,200
485	Workforce Safety & Insurance	\$0	\$280,882
504	Highway Patrol	\$193,710	\$53,939
530	Department of Corrections and Rehabilitation	\$725,255	\$37,903
540	Adjutant General	\$81,395	\$157,101
601	Department of Commerce	\$63,766	\$19,267
602	Department of Agriculture	\$44,751	\$34,429
627	Upper Great Plains Transportation Institute	\$1,524	\$8,234
628	Branch Research Centers	\$23,724	\$8,573
630	NDSU Extension Service	\$20,656	\$20,455
638	Northern Crops Institute	\$1,179	\$359
640	NDSU Main Research Center	\$25,638	\$18,312
649	Agronomy Seed Farm	\$0	\$1,582
670	Racing Commission	\$2,721	\$0
701	State Historical Society	\$62,797	\$7,579
709	Council on the Arts	\$5,478	\$0
720	Game & Fish Department	\$0	\$183,965
750	Department of Parks & Recreation	\$59,447	\$1,287
770	State Water Commission	\$95,622	\$15,679
801	Department Of Transportation	\$0	\$1,221,406
State Total		\$5,299,934	\$4,607,296

SECTION 9. APPROPRIATION. There is appropriated under any funds received by the public employees retirement system not otherwise appropriated the sum of \$22,000 or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 10. EFFECTIVE DATE. Section 9 of this Act becomes effective on July 1, 2013, section 8 of this Act becomes effective beginning with the monthly reporting period of October 2013 and sections 1, 2, 3, 4, 5, 6, and 7 of this Act become effective on October 1, 2013."

Renumber accordingly

Attachment 3

Amendment Option B

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

Page 1, line 2, after "54-52.6-02" insert "54-52.6-09,"

Page 1, line 3, after "in" insert "and employer and employee contributions under"

Page 1, line 5, after "system" insert "; to provide an appropriation; and to provide an effective date"

Page 2, line 11, after "plan" insert "who elects to participate in the retirement plan under this chapter"

Page 2, line 12, remove "who is hired after July 30, 2013"

Page 7, after line 26, insert:

- "5. An eligible employee who elects to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to another position eligible for participation in the public employees retirement system under chapter 54-52. 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 national guard security officer or firefighter, or becomes a peace officer employed by the bureau of criminal investigation, 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, unless the member re-elects to participate in the retirement plan established under this chapter. If a member who elects to participate in the retirement plan established under this chapter becomes employed by a political subdivision that participates in the public employees retirement system, 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 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 plan, and the member re-elects to participate in the defined contribution 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.

SECTION 4. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member transferring from the public employees retirement system under sections 54-52-05 and 54-52-06 to the defined contribution plan under this chapter shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013. Each participating member transferring from the public employees retirement system under sections 54-52-06.1, 54-52-06.2, and 54-52-06.4 to the defined contribution plan under this chapter shall contribute an amount equal to the employee contribution rate required under those sections, and 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. The employer of a participating member transferring from the public employees retirement system under sections 54-52-05 and 54-52-06 to the defined contribution plan under this chapter shall contribute an amount equal to four and twelve-hundredths percent

of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013. The employer of a participating member transferring from the public employees retirement system under sections 54-52-06.1, 54-52-06.2 and 54-52-06.4 to the defined contribution plan under this chapter shall contribute an amount equal to the employer contribution rate required under those sections. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.

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.

4. Any contribution paid by the employer under this section in excess of six percent of the monthly salary or wage of a participating member transferring on or after October 1, 2013, from the public employees retirement system under sections 54-52-05 and 54-52-06 to the defined contribution plan under this chapter shall continue to be paid to the public employees retirement system under chapter 54-52. Any contribution paid by the employer under this section in excess of thirteen and one half percent of the monthly salary or wage of a participating member transferring on or after October 1, 2013, from the public employees retirement system under section 54-52-06.1 to the defined contribution plan under this chapter shall continue to be paid to the public employees retirement system under chapter 54-52. Any contribution paid by the employer under this section in excess of nine percent of the monthly salary or wage of a participating member transferring on or after October 1, 2013, from the public employees retirement system under section 54-52-06.2 to the defined contribution plan under this chapter shall continue to be paid to the public employees retirement system under chapter 54-52. Any contribution paid by the employer under this section in excess of eight percent of the monthly salary or wage of a participating member transferring on or after October 1, 2013, from the public employees retirement system under section 54-52-06.4 to the defined contribution plan under this chapter shall continue to be paid to the public employees retirement system under chapter 54-52."

Page 8, after line 8, insert:

"SECTION 7. APPROPRIATION. There is appropriated under any funds received by the public employees retirement system not otherwise appropriated the sum of \$76,000 or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 8. EFFECTIVE DATE. Section 7 of this Act becomes effective on July 1, 2013 and sections 1, 2, 3, 4, 5, and 6 of this Act become effective on October 1, 2013."

Renumber accordingly

Attachment 4

Administrative Amendment

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

Page 1, line 5, after "system" insert "; to provide an appropriation; and to provide an effective date"

Page 2, line 11, after "plan" insert "who elects to participate in the retirement plan under this chapter"

Page 2, line 12, remove "who is hired after July 30, 2013"

Page 6, line 3, replace "At the time of hire the" with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to rules and policies adopted by the board."

Page 6, remove lines 4 through 10

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, replace "In the case of an eligible employee" with "For an individual who elects to transfer"

Page 6, remove line 13

Page 6, line 14, remove "eligible employee transferring"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7 line 30, remove "new hires and"

Page 8, after line 8, insert:

"SECTION 6. APPROPRIATION. There is appropriated under any funds received by the public employees retirement system not otherwise appropriated the sum of \$22,000 or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 7. EFFECTIVE DATE. Section 6 of this Act becomes effective on July 1, 2013 and sections 1, 2, 3, 4, and 5 of this Act become effective on October 1, 2013.”

Renumber accordingly



NORTH DAKOTA
PUBLIC EMPLOYEES ASSOCIATION

AMERICAN FEDERATION
OF TEACHERS LOCAL 4660 AFL-CIO



301 NORTH 4TH STREET
BISMARCK, NORTH DAKOTA 58501-4020

701-223-1964
1-800-472-2698

EMAIL: comments@ndpea.org
WEBSITE: <http://nd.aft.org/ndpea>

Testimony Regarding House Bill 1452
Before the Senate Government and Veterans Affairs Committee
Stuart Savelkoul, Executive Director, NDPEA
March 7, 2013

Good morning Chairman Dever and members of the committee. My name is Stuart Savelkoul and I am the Executive Director of the North Dakota Public Employee Association. I am here today representing the interests of public employees across the state of North Dakota including the 2,600 members of NDPEA. At first glance, this bill seems innocent enough. Its sponsors claim that our state employees should have a choice: whether to participate in the defined benefit plan or whether to have an individualized defined contribution plan. NDPEA has a clear position on this subject and it is one that dictates our strong opposition to House Bill 1452. Our reasons are both philosophical and fiscal in nature.

This bill, if passed, would offer the employee a choice. However, NDPEA would argue that a retirement dependent upon a DC plan is inferior in security and benefit to that provided by a DB plan. To put it simply, these options aren't equal and therefore we hope that you will give this bill an unfavorable recommendation in an effort to prevent individuals from making a choice they are likely to regret.

North Dakota's state employees have been given the option to opt out of their retirement plan in the past. During the 1980's the stock market was doing well and some people were clamoring for the opportunity to control their investments under the belief that they could outperform the pension fund. They were given this choice, and so great was the remorse that, in 1987, the legislature passed a bill that allowed them to buy their way back into the main plan. In 1999, unclassified employees were given this choice; NDPERS has evidence to show that few DC plans belonging to employees have outperformed the main plan over the last 14 years. In fact, if given the opportunity to return to the main plan, I am aware of at least 50 of those individuals who made the switch in 1999 who would take you up on the offer.

Defined Contribution Plans are inferior to Defined Benefit Plans (pensions) for several reasons:

- 401(k)s were never meant to replace pensions
- DB Plans provide secure and higher retirement benefits
- DB Plans are managed by financial experts
- DB Plans lower costs with pooled risks
- DB Plans don't age
- DB Plans boost the economy

Finally, if future employees were to opt out of the main plan, this bill would have a negative fiscal impact on NDPERS. This bill has the potential to shuffle dollars away from the main plan and into these individual accounts. The testimony offered by NDPERS indicates what increases will need to happen to current contributions if this bill is passed in its present form. So, in essence, every individual who makes this poor choice will, in a small way, hurt the fund that is meant to provide benefits to everyone who does not make this election.

BRANCH OFFICES

Fargo: NDPEA, AFT
3002 1st Ave N, Office #1
Fargo, ND 58102
701/232-8307
1-800-422-0236

Jamestown: NDPEA, AFT
104 1st Ave S, Suite 500
Jamestown, ND 58401
701/952-2501

2 B

2013 House Bill 1452

Testimony by Brenda Schlomer, Claims Adjuster/WSI

March 7, 2013

Mr. Chairman, Members of the Committee:

My name is Brenda Schlomer and I am giving testimony in opposition of HB 1452 and requesting amendment.

My reason for being here today have everything to do with being a State Employee for that past 27+ years. I began working for WSI at the age of 22, which was in 1985. Little did I know at that time that WSI would become my career. 27 years later I am still a dedicated, loyal state employee helping injured workers through the workers compensation process, and who was looking forward to retirement with the Rule of 85. This had been my dream for a long time. I calculated out the years I would need to work and how old I would need to be before I could apply that rule to myself.

Some years back I contacted PERS about buying years of service to see if it was affordable and to get me closer to the Rule of 85 a bit sooner. I sent them the required paperwork and within the same day I received a disturbing phone call from PERS asking me what I thought I was doing? What did I want? I was informed that I was NOT ELIGIBLE to buy years of service, and I was NOT ELIGIBLE for the Rule of 85 because I was in the Defined Contribution Plan.

Over the course of that day and days, and weeks, and months to follow it has become crystal clear that the leaders and HR department of WSI's then administration in 1999, did not present clear or true information, they did not have the well-being, or best interest of their employees in mind, nor did they provide education necessary to make this life changing decision. The decision I made cost me my dream of retirement. The Defined Contribution Plan in my opinion is not a viable retirement option. When I recently met with my financial planner, I was told that I "might" have enough funds to retire for about 7 years total. Then I better plan on working again, or putting off retirement until I put another 27 years in with the State of North Dakota. This is not a retirement plan.

I cannot describe my sleepless nights, my tears, my frustrations over this terrible mistake that I made.

It's clear that I would not want to see anyone else make this same decision and if HB 1452 were to be amended to allow people who made such a decision in the past to come back in to the Defined Benefit Plan, then this would give me the opportunity to retire someday.

Brenda Schlomer

20

2013 House Bill 1452

March 7, 2013

Good Morning, Mr. Chairman and Members of the Committee, my name is Becky Paul, I am a Utilization Review Nurse at Workforce Safety and Insurance (WSI) and I am here today to testify in opposition of HB1452 in its present form and request it be amended.

I have been working for WSI since 1996 under contract as a nurse. It was in 2001 that WSI hired me on as a State employee of North Dakota. At this time of hire to the state with WSI, they offered the Defined Benefit Retirement Program along with the Defined Contribution Retirement Program with little explanation of each program; this was due to short time to make a decision. I trusted our employer to provide guidance during the decision making process, and with lack of information provided to me, I felt rushed and confused. In addition to this I felt pressured that the Defined Contribution Program was a onetime opportunity and was the best choice to make. My husband is a state employee and he is in the Defined Benefit Retirement Program.

I do not recommend the long term employees with the State of North Dakota, and also who plan on making a long career with the State of North Dakota, to transfer to the Defined Contribution plan in exchange for giving up a pension retirement plan as this would be a mistake. I would like the House Bill 1452 to be amended to allow people who made the decision of the Defined Contribution Retirement Program in the past to be able to have an opportunity to be offered the Defined Benefit Retirement Program. This will allow me to be able to retire someday. Thank you for your time and consideration.

Sincerely,

Becky Paul

Dear Mr. Chairman and Members of the Committee, my name is Diane Weide, I am a paralegal at Workforce Safety and Insurance (WSI).

I began my employment with WSI in 1997. In 1999, Legislative action removed WSI from the control of the Governor of North Dakota and placed us under the control of an Agency Board. WSI staff was told at that time if we planned to be with WSI for any length of time it would be in our best interest to remove ourselves from the Defined Benefit Retirement Fund and enroll in the Defined Contribution Fund.

Management at the time was not forthcoming with all the facts. It has recently come to my attention that they had alternative motives and it was not in the best interest of WSI staff. This lack of information and understanding of what was truly happening is now affecting my future.

I have invested and am proud to say I have worked at WSI for the past 16 years. My plan is to continue to serve the injured worker, employer and the State of North Dakota for many more years. I am asking you to please consider amending HB 1452 to include the opportunity for employees to return to the Defined Benefit Retirement Plan.

I would ask that you please amend HB 1452 and provide your support for the amended bill. Thank you for your attention to this matter.

Sincerely,



Diane Weide

20

2013 House Bill No. 1452
Testimony Before the Senate Government and Veterans Affairs Committee
Cade Jorgenson
March 7, 2013

Mr. Chairman, Members of the Committee:

Good morning; my name is Cade Jorgenson, an employee and manager with Workforce Safety & Insurance. I am providing testimony in opposition to HB 1452. I support amending this bill to allow defined contribution plan members to opt back in to the State's defined benefit program.

In 1999 I had been employed as a full time equivalent employee with North Dakota Workers' Compensation Bureau for several months when faced with the decision to remain enrolled in the State's defined benefit (pension) plan or elect to enroll in the defined contribution (DC) plan. Considering such variables as the significant historical employee turnover at the agency (especially within the management ranks), my general knowledge of the stock market, and (limited) information afforded to me by the agency, I chose the road well-traveled by many of my colleagues, electing to enroll in the DC plan.

My decision should serve as a tale of caution for those who may be granted that same choice. Currently the North Dakota Public Employees Retirement System estimates my retirement plan value as around half--just 50% or so--of the comparative value I would receive through the standard pension plan. My investment company (initially Fidelity and currently TIAA-CREFF) is chosen for me, as are the pre-approved mutual funds I may invest in. While the pre-approval process is a noble goal and is intended to provide participants protection from investing in potentially unsound funds, unfortunately my allocations have been adversely impacted more than once as I chose to enroll in pre-approved funds that were later restricted by the State's overseers due to poor fund management or mis-management. As a result, the protection intent and my resulting returns both ended in failure.

I have been treated well as a State of North Dakota employee. I value my job and the ability it grants me to serve as a public servant. I have been contributing significant additional savings for retirement in an attempt to mitigate what to date has been a DC plan tragedy that I believe no one intended or saw coming. Unfortunately, despite significant additional personal savings the retirement gap remains particularly daunting.

I respectfully ask the committee to sincerely consider amending this bill in the interests of fairness. Workers' compensation employees made their DC elections with the knowledge that we were not classified employees. While this eliminated certain employment protections in an uncertain work environment, it also allowed for pay scales beyond that of other State employees within classified service and carried the expectation that annual bonuses or merit increases would be well beyond the constraints of the classified service. In other words, there was both risk and reward. Unfortunately, when Workforce Safety & Insurance was brought back into classified service by state referendum, the DC plan/employee situation went unaddressed, leaving employees holding the risk without the benefit of the rewards.

I implore this committee to strongly consider correcting the grievous injustice of a 50% retirement benefit value for those few public servants caught in this unsuspected injustice and I sincerely thank you for that consideration in amending this bill to that end.

2F

3-7-13

Dear North Dakota Legislators:

I am not able to attend the committee meeting today, but would like to send this note for your consideration.

I have worked for Workforce Safety & Insurance since 1994 and currently serve North Dakota as a Senior Claims Adjuster for the agency.

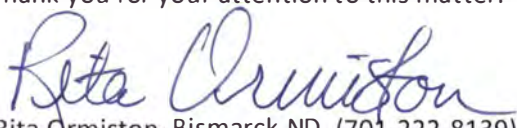
I believe that the state employees impacted by the previous election from the Defined Benefit to the Defined Contribution plan deserve to have the matter reviewed.

While I understand that when the election was made to move from one retirement plan to another, we were required to sign and elect this, it now appears that we were not given all the information needed to make the best decision prior to moving from one plan to another. Also, I understand, that as with any choice, there will be advantages and disadvantages of both.

I believe a new employee to state government is given the option at the start of employ. I would hope that they are given better information today at the start of their employ to make an informed decision so that they could retire as a state employee at a time they feel necessary for their needs.

It would seem appropriate to afford those impacted by the previous move the same opportunity if the Defined Benefit plan is actually the better plan for their retirement situation.

Thank you for your attention to this matter.


Rita Ormiston, Bismarck ND (701-222-8139)

26

Good Morning, Mr. Chairman and Members of the Committee:

My name is Susan Lackman. I have been employed with Workforce Safety & Insurance as a Claims Adjuster since January 1994. I am here to testify against HB 1452 in its present form. HB 1452 should be amended to allow people who previously opted out of the Defined Benefit plan, the option to come back into the Defined Benefit plan.

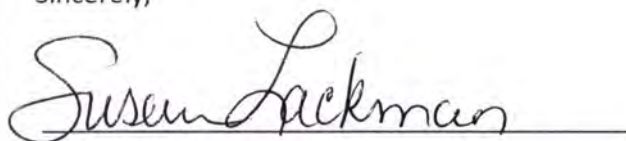
Unfortunately, I made the decision in December 1999 to opt out of the Defined Benefit plan. I never realized the full impact of that decision until about 15+ years later. I discovered the Rule of 85 does not apply to me and I no longer have the option to purchase years of service if I had an opportunity to do so.

Further, while management of my own retirement funds sounds like a good thing, it truly is not. Here are a few reasons why it is not a good plan: 1) I am not a financial planner or advisor. While I have a bit of an understanding of the stock market, mutual funds, etc., I don't have the expertise or time to manage my own retirement funds in order to maximize my return. 2) I have no choice as to the Financial Company where I could put my funds in because I am only allowed to use the company selected by ND PERS via an RFP. 3) Moreover, with the financial firm selected, I am also limited to specific funds within the company.

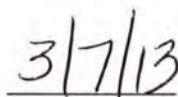
Again, I ask this committee to amend HB 1452 to allow people who opted out of the Defined Benefit Plan to return as this would allow for a more stable and equitable retirement option. I don't want to see anyone else make the same mistake that I did when I removed myself from the state pension plan, thereby sacrificing my future financial stability during my retirement years.

Thank you for your time and consideration,

Sincerely,



Susan Lackman



Date

21

Mr. Chairman and members of the committee, my name is Cheri Brynjolfson.

I have been a Claims Adjuster with Workforce Safety & Insurance (WSI) for the past 17 years. I am in direct opposition to HB1452. I am writing this testimony on my own time and accord. But I also know I do not stand alone.

I was part of the first group that was given an opportunity to switch from the Defined Benefits (DB) retirement plan to Defined Contributions (DC). In 1999, North Dakota Workers Compensation (now WSI) was no longer under the Governor, we were no longer a classified agency, and we were told that future of our agency was moving towards privatization. Our employees were presented with the option to change through an informational meeting provided by our Human Resources Department. The tone of the message was loud and clear, if you were not planning on retiring in the very near future, you NEED to change. Or we would be at risk for losing our financial future if we did not make the change to the DC plan. Since I had only worked there a couple of years, I made the switch.

I have now learned that the reason for offering the change in the first place came because of the desire for some executive members of NDWC (now WSI) who wanted the portability. But to gain the support in the legislature, to make this change happen, they needed to show a significant number of employees wanting the change.

Thus they sold us on this message. I believed they had our best interests at heart, not self serving interests, and I switched from DB to DC plan.

We were not aware that the North Dakota Public Retirement System (NDPERS) offered testimony AGAINST this bill back in 1999 as they did not feel that it was in the best interest of state employees to move out of the DB plan. If we had been presented with this information I, along with many others, would not have made the change to the DC plan.

Now is the time rectify this situation. Since we are now back under the Governor and we have been reclassified, I am asking for the opportunity to change back to the DB plan.

The supporters of HB1452 highlight the need for "choice". If that is true, why would you not allow the choice to switch back? Please amend HB1452 to allow the choice for existing members to switch back to DB.

If this amendment is not granted, I want this bill KILLED. I do not want future employees to make the same choice I did and regret it.

I urge you Mr. Chairman and members of the committee to hear our story and read our words and do the right thing. Show us that you value our commitment and dedication for our years of service.

Respectfully,
Cheri Brynjolfson

21

2013 House Bill No. 1452
Testimony Before the Senate Government and Veterans Affairs Committee
March 7, 2013

Mr. Chairman, Members of the Committee: My name is Jason Doerr. My wife is currently under the Defined Contribution Retirement system which HB 1452 is attempting to offer to other new hires and eligible state employees to participate in with a one-time selection. As the HB 1452 is written, I would have to recommend a do not pass on this bill. The reasons for my recommendation are as follows:

While the Defined Contribution plan has not been the most lucrative return on investment and the existing Public Employee Retirement System seems to have been the better retirement choice during the last few years, the bill as written appears to place all new hires with a daunting decision of electing to participate in the Defined Contribution plan versus the default Public Employees Retirement System. In a new hire situation, the eligible employee would have to make the irrevocable election within the first 30 days of completing their probationary period of employment and identify whether to participate in the Defined Contribution plan or not. I believe an election so soon after their hiring would be done without a full appreciation of the risks and benefits they are deciding upon for their long term retirement planning. I believe the eligible employee under these circumstances will rather default to the Public Employee Retirement System by not making a selection. Also the bill is unclear whether or not the new hire as an Eligible Employee defined in the bill as a permanent state employee will still have the option to elect to participate in the Defined Contribution plan at any time after the probationary period.

If multiple congruent state retirement systems are planned to continue in the future for an employee, this bill should provide methods to transfer between the multiple retirement plans. By making this election irrevocable, this bill does not allow for an employee to correct a one-time wrong election other than self-terminating their state employment. Also, with multiple retirement systems, I question whether the two retirement systems can maintain comparability as it relates to funding and benefits received if this bill's election is to only participate in the Defined Contribution plan. For example, it appears there is a funding inequity between the two retirement systems in regard to the disability retirement benefit and the supplemental retirement savings incentive. The Public Employee Retirement System appears to receive employer's contribution while the Defined Contribution plan does not receive the same equitable funding from the employer. Until perceived comparable treatment is reached between the two plans, I do not believe the new employee or eligible employee will have any incentive to elect to participate in the Defined Contribution plan.

I believe this bill as written is urging participation in the Defined Contribution plan but it will not provide the new hires or eligible employees the incentive to participate in the Defined Contribution plan and therefore should not become a statute. If it is the intent to maintain for future new hires to only participate in the Defined Contribution retirement plan, this bill should be amended clearly stating the transition. Sincerely, Jason Doerr

Testimony before the Government and Veterans Affairs Committee
Connie M. Johnson, State of North Dakota Employee (former employee of Workforce Safety & Insurance)
March 7, 2013

Good morning Mr. Chairman and Members of the Committee:

My name is Connie Johnson, and I am a State employee. This testimony was composed jointly by myself and Sheree Schafer, a fellow State employee, as we both share the same opinion on this matter. I am in support of House Bill 1452 provided that there be an amendment that allows State employees who are in the Defined Contribution Plan to move back into the Defined Benefit Plan. Having 24 years and 19 years respectively of service with the State of North Dakota, we both are proud to serve our great State and its residents. Along with our years of service, we also have a strong sense of dedication and commitment to State Government. In our future, after completing a long-standing and dedicated career with the State of North Dakota, we anticipated having a retirement plan that included a pension that would assist us in our retirement years. In 1999, WSI employees were given the opportunity to terminate membership in the Defined Benefit Plan and become a participating member in the Defined Contribution Plan. When this was occurring, we found ourselves tasked with making a decision in a short timeframe while not fully understanding the ramifications of our decision. The fact that the option to move out of the Defined Benefit Plan was being presented to us was confusing. Furthermore, we trusted our employer to give us guidance through the decision-making process – but, due to a lack of information provided by WSI, we only felt more frustrated and confused. Additionally, we felt pressured and swayed as the transfer to the Defined Contribution Program was presented as a “one-time opportunity” and thus viewed by us as a smart choice to make. We did not fully understand the magnitude of giving up the Defined Benefit Retirement Plan – and ultimately a pension during retirement. I am embarrassed to admit that it was years later before I fully understood what I had done. If employees with the State of North Dakota are given the choice to participate in either the Defined Benefit or Defined Contribution plan – I would advise them to investigate the decision very thoroughly – I would not want them to make the decision blindly like I did – because if they choose the Defined Contribution Plan and plan on being a long-term employee of the State and possibly retiring with the State, they are giving up a pension retirement program. As for those of us who made this choice without fully understanding it, we respectfully request that HB 1452 be amended so we are given the opportunity to transfer back into the Defined Benefit Plan. By doing so, those of us who have enjoyed a long-standing, dedicated career with the State of North Dakota can have our pension retirement benefit restored. Thank you for your time and your consideration.

Sheree Schafer

Connie M. Johnson

Good morning Mr. Chairman and members of the committee. My name is Trisha Tosseth. I am an administrative assistant at Workforce Safety & Insurance (WSI). I have worked at WSI (formerly North Dakota Workers Compensation Bureau) since 1994. My written testimony is to oppose HB 1452 as it currently stands. I would, however, be in support of this bill should an amendment be added to allow employees who opted out of the defined benefit plan the opportunity to come back into the defined benefit plan.

When I signed up for the defined contribution plan in 1999, I was not provided sufficient information to make an informed decision. I did not realize that I was forfeiting a pension or would not have signed up for this plan. I was under the impression I would lose my retirement benefits when WSI privatized. I recall the Administration of North Dakota Workers Compensation supporting this plan and indicating it would be my best option. I trusted their advice.

I am asking for your support in amending HB 1452 to allow the opportunity for employees to opt back into the defined benefit plan.

Thank you for your consideration.

Trisha Tosseth
Signature

3-7-13
Date

Testimony for HB 1452

Mr. Chairman and Members of the Committee, my name is Al Schmidt. I have been employed with the State of North Dakota, specifically, Workforce Safety & Insurance, for 15 years. I oppose HB 1452 in its present form, and recommend amendments to provide equity in retirement benefits.

In 1999, I, as an employee, of Workforce Safety & Insurance, (WSI), was advised by the administration, at that time, of a choice between two plans, the Defined Benefit Plan, and the Defined Contribution Plan. Whether I wanted NDPERS/State Investment Board, (Defined Benefit Plan), or Fidelity, (Defined Contribution Plan) to invest my retirement funds. When I inquired about the choice differences, I was advised all ND State benefits still applied to me, and that I was only choosing which entity was going to invest my retirement funds. During this time, it was vocalized, by the Administration, at that time, that WHEN the Agency is privatized, rather than be a State Agency, the Fidelity Defined Contribution Plan was portable. At that time, I was also a non-classified State employee because Workers Compensation was not under the control of the Governor. The picture, as presented to me, was clear. I chose the Defined Contribution Plan with Fidelity. Again, I inquired about the two plans and was not advised at any time that I was giving up the Rule of 85, Disability Benefits, and the opportunity to buy early retirement.

In 2009, when WSI was placed back under the Governor, and was NOT privatized, did I really look at, and compare, the two plans, side by side. I was consumed with disbelief when I found out what I had lost by choosing the Defined Contribution Plan.

After 15 years with the State of North Dakota/WSI, and a job I enjoy, I have no viable retirement plan. I was now a classified State employee, subject to the constraints of HRMS and the State's classifications and salary caps, but I did not have a retirement plan.

I've been overwhelmed with concern and worry and can't begin to express the personal impact this decision has on me. How am I going to retire? Maybe someday, when I'm very old, I may have that opportunity. So, today, I ask for your help in changing my outcome.

Mr. Chairman and Committee Members, I ask for a one-time opportunity, to allow me to have a viable retirement plan with the State of North Dakota. I respectfully ask for your help in allowing me to choose the State of North Dakota's Defined Benefit Plan.

Thank you.

Al Schmidt

2m

Brockel, Susan M.

To: sbrockel
Subject: RE: testimony

-----Original Message-----

From: sbrockel [mailto:ksbrockel@bis.midco.net]
Sent: Wednesday, March 06, 2013 9:08 PM
To: Brockel, Susan M.
Subject: testimony

2013 House Bill No.1452

Testimony by

Susan Brockel, Customer Service Rep.

March 7, 2013

Mr. Chairman, Members of the Committee:

My name is Susan Brockel and I am giving testimony in opposition of House Bill No.1452

and requesting amendment. I would love to see my fellow co-workers and I the

opportunity to pick the retirement that is best for our individual needs now that we

have all the correct information. The passing of this bill would give us the security to

retire someday. It would be in the best interest of old and new employees to have a choice.

Thank you

Susan Brockel



2N

2013 House Bill 1452

Testimony by Denise Kienzle, Claims Adjuster/WSI

March 7, 2013

Mr. Chairman, Members of the Committee:

My name is Denise Kienzle and I am giving testimony in opposition of HB 1452 and requesting amendment.

I have been a loyal and dedicated state employee for over 22 years. In 1999 the leaders and HR department of WSI's then administration presented to us what is now called the Defined Contribution Plan. They did not present any clear or true information, they did not inform any of us how this would play out, they did not inform any of us that we would not be considered under the Rule of 85.

Two years ago, I was informed from another state employee that when I would retire, I would have to figure out what to do with what little bit I have left. We were never told that when the money is gone it is gone, unlike other state employees in the Defined Benefits Plan, who once retired, continue to receive benefits until the day they are no longer on this earth.

We were lied to and pressured into making a very rush and ill informed decision. Information was withheld and we were lied to!

The way things stand; I will never be able to retire, as I will not be able to live if I do.

I believe the only fair and just thing for the state of North Dakota is to amend HB 1452 to allow those employees that were unfairly treated, lied to, and pressure into making a ill-informed decision to be allowed to come back in to the Defined Benefits Plan, without any penalties, so that we too can someday enjoy the opportunity to retire like other state employees.

Denise Kienzle

2013 House Bill No. 1452

Testimony by

Patty Gleich, Claims Technician

March 7, 2013

Mr. Chairman, Members of the Committee:

My name is Patty Gleich and I am giving testimony in opposition of House Bill No. 1452 and requesting amendment.

I am proud of my 28 years of service to the state but I am not proud of the events that took place in 1999 when the Defined Contribution Plan was introduced to W.S.I. employees and how it was presented. It was presented as a "rosy future" for us because we were told "there was a lot of money being made in the stock market." We were never given the whole big picture. As I recall we were only in meetings about Defined Contribution but never about Defined Benefit. I never remember North Dakota P.E.R.S coming in for a meeting to inform us of the repercussions if we switched.

I made a very bad choice. I feel very naive as I tell you today I honestly did not know until very recently that I gave up the "Rule of 85" or the fact that if I accepted employment at another state agency I wouldn't be given the opportunity to opt back in to the Defined Benefit plan. W.S.I. employees were never given all the information to make a smart choice. So in the process some good hard-working and honest people have given up their hope and dreams of actually being able to retire.

Please put yourself in our shoes. What if you worked your whole life and were never able to retire? This is our reality. This is the reality of your decisions here today. Please take them to heart. You now have a chance to right a wrong.

This is our livelihood. We have served North Dakota proudly with our dedication and loyalty and we deserve to be able to walk away in our later years with a sense of satisfaction and security. We have served this state and I plead with you to serve us back.

Please oppose this bill as written and seek changes that would allow the State employees the opportunity to opt back into the Defined Benefit plan.

Thank you for your time in allowing me to tell my story.

Sincerely,

A handwritten signature in cursive script that reads "Patty Gleich". The signature is written in black ink and is positioned above the printed name.

Patty Gleich

Mr. Chairman and members of the Committee

I have been an employee of Workforce Safety & Insurance since November of 1994. My concern in writing to you today is in regards to HB1452.

When the Defined Contribution retirement plan was presented to employees at North Dakota Workers Compensation, it was presented by Executive Management and the Human Resources Department that if you weren't going to be retiring within the next six years that you needed to change from PERS to Defined Contribution for the sake of your own retirement future. Defined Contribution was being presented to the employees as part of the change of being removed from the Governor and our workers compensation system would soon be like other States in the Union. Employees were strongly urged to remove ourselves from Defined Benefits for our own financial future.

I am asking for an attempt to get an amendment which would allow employees to opt back into the Public Employees Retirement System Defined Benefit.

Thank you for your time in this matter.

Kim Wagner

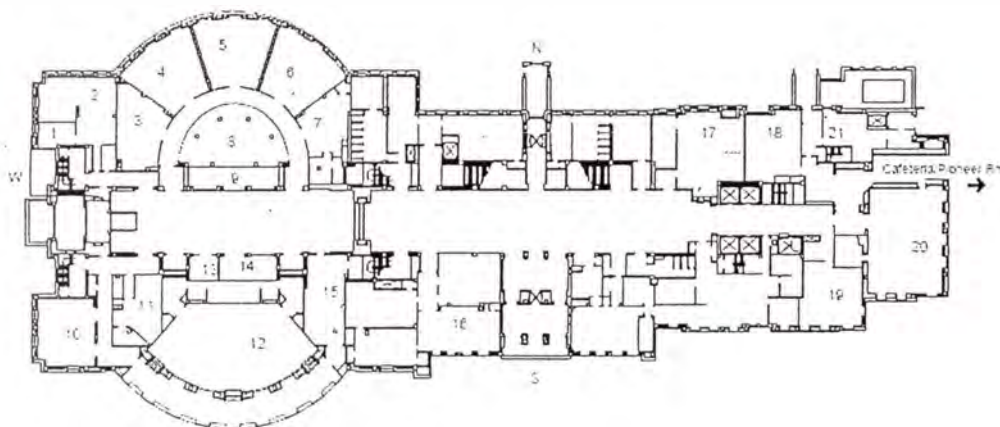
22

Good Afternoon: Please see the information below. This is the bill that NDPEA has indicated they would be willing to attempt to get an amendment to which would allow employees to opt back into the defined benefit fund from the defined contribution fund. At this point we do not know if the amendment has been enacted and of course if not, then it is a moot point, but we should know more on this later today. However, we feel it is best to be prepared for Thursday rather than wait. Please consider attending the hearing and testifying, so get your annual leave request submitted or whatever you need to do. If you don't feel comfortable testifying personally, you can also prepare written testimony for the committee. We definitely need a show of numbers when this bill is heard in committee or our chances will be dashed. PLEASE HELP IF YOU CAN!

WHEN: Thursday, 3/7/13, at 10:45 AM

WHERE: Government and Veterans Affairs Committee—Missouri River Room (west of cafeteria #16 on graph)

Committee Members: Sen. Dick Dever (chair); Sen. Spencer Berry (vice-chair); Sen. Dwight Cook; Sen. Richard Marcellais; Sen. Carolyn Nelson; Sen. Nicole Poolman; Sen. Donald Schaible



From: Lackman, Susan E.
Sent: Tuesday, March 05, 2013 10:14 AM
To: Rohde, Jolene F.; Schlomer, Brenda L.
Subject: FW: Where are we on HB 1452?

FYI....

From: Stuart Savelkoul [mailto:stuart@ndpea.org]
Sent: Tuesday, March 05, 2013 10:13 AM
To: Lackman, Susan E.
Subject: Re: Where are we on HB 1452?

Sue, the quick answer is, "yes." Though I will send you more information later today.

On Tue, Mar 5, 2013 at 10:05 AM, Lackman, Susan E. <slackman@nd.gov> wrote:

Hi Stuart....I see there is a Senate committee hearing on HB1452 on Thursday, 3/7/13, at 10:45 AM. Is this when we will need to be present to testify and to have others present for additional support?

Please let us know ASAP, particularly so we have enough time to have people prepare their testimonies.

Thanks much,

Good Morning, Mr. Chairman and Members of the Committee, my name is Jolene Rohde, I am the Impairment Auditor at Workforce Safety and Insurance (WSI) and I am here today to testify in opposition to HB1452 as written and to respectfully ask that it be amendment.

I began my employment with WSI, then known as the Workers' Compensation Bureau in 1997. In 1999, Legislative action removed our Agency from the control of the Governor of North Dakota and placed us under the control of an Agency Board. At that time, the Administration of WSI informed agency personnel of the legislative change and indicated, if we planned to be with the organization for longer than 10 years or had greater than 10 years prior to retirement, it would be in our best interest to remove ourselves from the Defined Benefit Retirement Fund and enroll in the Defined Contribution Fund since **NOT IF** but rather **WHEN** the Agency privatized we would lose our retirement funds. We were informed that this change in fund choice would in no way change or affect our retirement benefits or what we were entitled to, but was merely another method of investing our funds and would allow us to have our retirement funds available **WHEN** the Agency became a private Insurance Fund. These facts can be verified by numerous of my co-workers who were also employed with WSI in 1999, some of which are here today.

Since that time, of course WSI has not privatized and the Agency, by a vote of the people, was placed back under the control of the Governor of ND in 2009. Thus, WSI employees were again placed under the constraints of HRMS, placed back into the classified employee status, subject to their classifications and salary caps, while our retirement funds were still controlled by the State as to where they can be invested, in what funds they are invested and what company managed the funds, etc. However, there have been no provisions nor are we allowed an opportunity to return to the Defined Benefit Retirement Plan. Yes, we erred in believing the previous Administration of WSI that our benefits would be no different in the Defined Contribution Plan than that of the Defined Benefit Plan, but would merely be invested differently. However, were we wrong in 1999 to believe that our employer would not have our best interest at heart? This lack of information and understanding was so prevalent that I have had co-workers that have actually contacted NDPERS for information on when they would meet the rule of 85 and requested information on buying years of service, only to be told, "What are you doing, this doesn't apply to you".

I am not talking about WSI employees who wanted to "take their money and run" in 1999, unlike Agency administration. I am talking about honest, hard-working, dedicated state employees who have stuck with the Agency and the State of ND, who have continued to service the State of North Dakota, its' injured workers and employers. I don't believe it is entirely our fault that we believed and trusted the prior Administration of WSI and it is not in any way our fault that the Agency has been removed from the

control of the Agency Board and placed back under the control of the Governor. Yet, we do not have the choice or opportunity to return to the State Defined Benefit Retirement System.

I respectfully request that you amend HB1452 to allow WSI employees the opportunity to return to the Defined Benefit Retirement Plan given the change of status of our Organization and the misinformation we were provided. NDPEA leadership can also tell you that they were not allowed to contact agency employees to discuss this legislation in 1999 and I know for a fact that agency staff were told that NDPEA and PERS were not be to contacted for assistance or direction.

My ill-advised decision in 1999 has caused me a great deal of anxiety as the facts of what I lost have come to light. I can tell you that I truly love my job, because I feel that I make a difference for the injured workers' I serve and that I am an asset to the employers, providers, my co-workers, WSI and the State. However, that being said, I would like to have the peace of mind to know that when the time comes that I no longer can be or feel that I am an asset, that I can make that decision knowing that I can retire.

You would be righting a wrong for trusting, hard-working, dedicated state employees who were blatantly misled. I and likely none of my co-workers in this situation, would see this type of amendment as a "get out of jail free card". We realize that his option would come at a price. Although I have no actuarial study to support my belief, but I believe that allowing employees of our Agency the opportunity to return to the Defined Benefit Retirement Plan would and/or could also strengthen the fund, rather than hurt the fund and even more important than that, I believe it is the right thing for you to do. I would ask that you please amend this bill and provide your support for the amended bill. Thank you for your time and attention.

2013 House Bill No. 1452
Testimony Before the Senate Government and Veterans Affairs Committee
Jeanine Doerr
March 7, 2013

Mr. Chairman, Members of the Committee:

My name is Jeanine Doerr. I was previously employed by Workforce Safety & Insurance for approximately 17 years and a little over a year ago accepted a position as an appeals referee with Job Service North Dakota. I elected to enroll in the defined contribution (DC) plan in 1999 while a WSI employee, which is the same opportunity HB 1452 proposes to allow for other employees. Based upon my experience since my election, I would strongly oppose HB 1452 as currently written and recommend amendments to provide for at least an appearance of equity in the benefits offered.

When electing to participate in the DC plan, the primary issue that was reviewed was the "portability" of the plan and that it would provide the enrollee to be the captain of their own ship so the speak. However, after being in the plan for many years now, I have come to realize that my ship is confined to a very small body of water in that my fund manager is selected for me and my selection of investment funds is quite limited. That aspect should be made very clear to the prospective enrollee. Alternatively, the bill could be amended to provide the enrollee with more control over his or her investments.

The second issue not addressed with this election is that the defined benefit (DB) plan offers additional benefits to the employee with the cost of those benefits being borne by the employer. These benefits are not similarly offered in the DC plan and prospective enrollees in the DC plan should be notified that these benefits will not be received under the DC plan and appears to represent a huge disparity in treatment of employees separate and apart from the actual retirement funds. One of which is the disability provision provided under the DB plan, the cost of which is entirely borne by the employer. The only access to disability available to a member of the DC plan is essentially a withdrawal from their individual DC account, thereby reducing funds available for retirement. The disability offered to members of the DB plan does not appear to ultimately affect their available funds at retirement. This is a huge disparity in treatment.

Another benefit not available to members of the DC plan is the PEP program available to the DB members which provides for employer-sponsored incentives for additional savings with deferred compensation. There is no similar incentive for those in the DC plan.

Jeanine Doerr
Testimony re HB1452
March 7, 2013

However, given the disparity in anticipated retirement receipts (DC plan members currently projected at 40-60% of what DB plan members can expect to receive), the savings in the deferred compensation program is even more critical for DC plan members and should be somehow similar incentivized. An amendment to this bill could create for equities in that area.

The information provided by NDPERS indicates that a state employer of a DC employee can choose to pay the employee's portion of the additional percentages added for stabilization of the retirement funds. An amendment could provide that the employer would provide matching dollars for money invested to the deferred compensation program and/or require the employer of the DC employees to pay the employee's portion allocated for stabilization.

I would like to leave you with this thought. There is a small group of employees who were employed by WSI in 1999 after the agency was taken out of the classified employee structure. There were many discussions with the employees strongly selling the DC plan which was coupled with the additional opportunities we would have to earn higher salaries and therefore increase our contributions. There was never any discussion about foregoing other benefits that were attached to the DB plan, such as the disability program. The people of this state voted to return WSI back under the control of the Governor and returned the employees to classified status. There was significant action taken to ensure everyone was properly classified, which in many cases, created salary caps that were lower. At that time, it was anticipated that we would be offered the ability to return to the state retirement program, as we were now once again classified employees. However, that action was not taken. I believe that under these unique circumstances, special consideration should be given for the small group of employees that were removed from the classified system and elected to go with the DC plan based upon the employment structure at WSI who have now been forced to return to the classified system.

This is not a situation of buyer's remorse, but more that of a small group of employees that have been adversely affected by a unique series of legislative events controlling WSI. Please consider amending this bill to equalize the disparity of benefits to state employees enrolling in the DC plan.

Testimony

House Bill 1452 – Bill Kalanek, Association For Public Employees

Senate Government and Veterans Affairs Committee

Senator Dick Dever, Chairman

March 7, 2013

Chairman Dever and members of the Senate Government and Veterans Affairs Committee, my name is Bill Kalanek and I am here representing the Association For Public Employees (AFPE). AFPE is a state association comprised of active and retired state employees living in communities throughout ND. On their behalf I am here to testify in opposition to House Bill 1452.

AFPE serves active and retired state employees by advocating to: 1) strengthen and maintain the existing defined benefit retirement plan 2) advocate for annuity adjustments for retirees if the financial environment allows and 3) work with the state government to improve compensation and benefits for active state employees.

It is the feeling of our membership that even with the amendments made to HB 1452 the bill in its current form would weaken the financial position of the PERS retirement fund, increase liabilities and slow the recovery of the plan from the hardships endured during the last market downturn. Now that the full scope of the 2008 losses has been realized it is important that the fund be managed in a way to optimize performance, limit liabilities and progress toward the funding goals established by the legislature in 2011.

The active, retired and future members of AFPE respectfully request that you consider all costs when you deliberate on HB 1452 and give it a Do Not Pass recommendation.

Thank you.



HB1452 – OPPOSE DEFINED CONTRIBUTION OPTION RETIREMENT PLAN

Thursday, March 7, 2013

Senate Government & Veterans Affairs Committee

Josh Askvig- AARP-ND

jaskvig@aarp.org or 701-989-0129

Chairman ^{Dever} ~~Kasper~~ and members of the ^{Senate} ~~House~~ Government & Veterans Affairs Committee, I am Josh Askvig, Associate State Director of Advocacy for AARP North Dakota. AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older, and their families, in the State of North Dakota.

AARP opposes House Bill 1452 for two key reasons:

First: this legislation offers a **lesser** benefit that costs taxpayers **more** money.

Second: House Bill 1452 has the potential to destabilize the existing defined benefit plan for those who choose to remain in the current system.

This proposal will have an effect on taxpayers. The fiscal note on the amended measure states that this plan "would have a total biennium cost of \$18.3 million," which has not been appropriated. Fewer members would remain in the system to pay down the unfunded liability, increasing the cost to taxpayers.

The basic principles underlying AARP's state level public pension efforts is to ensure that any reforms made to state pensions safeguard the financial security of current and near-retirees, that state and local government employees continue to have access to defined benefit plans and, finally, that retirees continue to have access to inflationary protection through the provision of cost-of-living adjustments. These principles fit within AARP's national policy agenda, which asserts that we all have a right to be self-reliant and live with dignity in retirement.

Defined benefit pension plans are a sound investment for taxpayers and vital to state economies. These plans stretch taxpayer dollars further in achieving any given level of retirement income and are able to take advantage of the enhanced investment returns that come from a balanced portfolio over long periods of time. According to the National Institute for Retirement Security, "Each \$1 in taxpayer contributions to North Dakota's state and local pension plans supported \$8.10 in total output in the state. This reflects the fact that taxpayer contributions are a minor source of financing for retirement benefits – investment earnings and employee contributions finance the lion's share."¹

Defined benefit plans also provide an important source of institutional investments in the market that help fuel our state economy. NIRS explains that "Retiree expenditures stemming from state and local pension plan benefits supported 2,581 jobs in the state [in 2009]. To put the employment impacts of defined benefit plans in perspective, in 2009 North Dakota's unemployment rate was 4.3%. The fact that DB pension expenditures supported 2,581 jobs is significant, as it represents 0.7 percentage points in North Dakota's labor force."²

¹ National Institute of Retirement Security. "Pensionomics 2012." Electronic version found:

http://www.nirsonline.org/index.php?option=com_content&task=view&id=684&Itemid=48

² See above.

Just as a reminder: these are not lavish benefits. "The average pension benefit received [in North Dakota] was \$1,184 per month or \$14,213 per year. These modest benefits provide retired teachers, public safety personnel, and others who served the public during their working careers income to meet basic needs in retirement."³

Retirement income debates should center not only on meeting our obligations to appropriately fund the State's retirement systems, but also to provide retirement income in a way that provides the most bang for the taxpayers' buck.

Let's not forget retirement income is not a gift, its deferred income that accumulates not just from taxpayer contributions but from the deferred income employees set aside to meet their future needs. These defined benefit plans remain one of the most cost effective ways that government and its employees work together to insure against future costs for government of retirees who cannot live self-sufficiently without assistance.

While defined contribution plans are valuable to many, and are an important component to overall retirement income security as a supplemental savings vehicle, as primary retirement savings vehicles they force employees to bear most if not all investment risk, inflation risk, and the risk of outliving one's retirement nest egg. The shift of risk to individual employees in concert with other factors could leave many financially unprepared for retirement, for example:

- According to data compiled by the Federal Reserve and analyzed by the Center for Retirement Research at Boston College⁴, the median household, headed of a person aged 60 to 62 with a 401(k) account, has less than one-quarter of what is needed in that account to maintain its standard of living in retirement.
- The Employee Benefits Research Institute, which routinely estimates 401(k) plan asset allocations, account balances and loan activity, estimates in their 2010 analysis that the average 401(k) account balance was \$109,723 at year-end 2009 for those who held accounts continuously from year-end 2003 through year-end 2009, further they estimated that the median (or midpoint, half above and half below) 401(k) account balance increased to \$59,381 at year-end 2009.⁵
- According to the Current Population Survey, among the 152.6 million Americans who worked in 2010, just 49.2 percent of them had access to either a pension plan or a retirement plan. Of the 75 million workers with access to a plan, 81 percent of them participated, according to the Current Population Survey.⁶
- A sizable percentage of workers have virtually no money in savings and investments. Among workers providing this type of information in for EBRI's Retirement Confidence Survey, 56 percent reported that the total value of their household savings and investments (excluding the value of their primary home and any defined benefit plans), is less than \$25,000.⁷
 - Current retirees' total savings & investments in 2011 (not including residence or DB plan) breakdown as follows:

▪ Less than \$1,000:	28%
▪ \$1,000-\$9,999:	14%

³ See above.

⁴ <http://crr.bc.edu/>

⁵ EBRI October 2011 Issue Brief: http://www.ebri.org/pdf/briefspdf/EBRI_IB_10-2011_No363_Ret_Part.pdf

⁶ See above

⁷ See above

▪ \$10,000-\$24,999:	12%
▪ \$25,000-\$49,999:	6%
▪ \$50,000-\$99,999:	11%
▪ \$100,000-\$249,000:	12%
▪ \$250,000+:	17%

These facts provide a small snapshot of the lack of retirement readiness that many people face. Limited retirement savings also mean that more and more Americans are living in retirement primarily on Social Security income, so that:

- Today, more than half of all older Americans rely on Social Security for more than 50 percent of their family income; and
- 36.8% of those age 65 or older have 90% or more of their income coming from Social Security (EBRI's Craig Copeland).

In closing, I would like to emphasize that while this debate is complicated by a multitude of numbers and statistics – public pension reform is really about people – retirees, workers, their families, other taxpayers and communities. We hope that as you consider these changes that the retirement income security of system participants remains a key consideration.

Thank you for taking the time to hear our testimony regarding the defined contribution (DC program) and potential amendment to HB 1452.

To this day I struggle to understand how this situation regarding the DC plan came to fruition. The prior administration at WSI led us as employees to believe things that were not true, and therefore many of us opted into the DC plan, causing us to lose benefits we would have had if we had not bought into the administrations tactics to convince us to switch. It is extremely disheartening to know that we were working for an administration that did not consider our best interest, but rather felt it appropriate to manipulate the facts in order to convince us to do what they wanted.

For those of us who have been long-term employees, who saw our future careers to be that of state service, we were told if we wanted to work for the state in the future for 10 years or more, it was in our best interest to change over to the DC plan. Had I been a less trusting employee, I might have realized that they had their own ulterior motives in selling us on the DC plan. However, having dedicated so much time and effort to my career with WSI, I believed at the time that the company would not lead us astray or push us to make a decision that would have detrimental effects on our livelihood in the future. Please don't mislead future hires to make the same terrible mistake we were led to make. It will not be in their best interest.

I have dedicated my work life to WSI for nearly 20 years as a claims adjustor. We have been through good times as well as some very trying times. At times we have endured a great deal of negative media attention and very stressful work conditions which led many people to leave the company. However, some of us who have endured high rates of turnover and stuck it out, either because we felt there was great merit in the work we do or because we felt we would be rewarded for all our years of dedication in the end are now suffering the consequences of the decision to change to the defined contribution plan.

I only recently discovered that with the change to the DC plan we also lost the rule of 85 and now I feel I may never have the opportunity to retire. As someone who has dedicated so much time, energy, and commitment to this company and this state, I am extremely frustrated by this matter. I am a single parent of two children who I have raised alone. I have worked full time at WSI since 1993. I have also worked a second full-time job for the past 7 years in order to help my children get through college. I do not regret working the second job but would like to think at some point I would be able to retire. However, with what I have in my DC account, it is unrealistic to believe that I will ever be able to retire, despite my extensive commitment to and history of state service.

At WSI our jobs are getting harder all the time with the nature of the employment climate in North Dakota, yet every day I come to work with the goal of trying to ease the burden for injured workers and making the difficult situations they are facing while being injured less daunting. These injured workers are concerned about their livelihood and futures. In a way, those of us who were convinced to switch to the DC plan now have similar fears and uncertainties despite having dedicated many years of service to WSI and the state of North Dakota. We too are facing an uncertain future of not knowing if we will ever be able to retire.

Accordingly, I ask that you please consider amending house bill ¹⁴⁵²~~1542~~ to allow those of us who have dedicated our work lives to state service the security we deserve by allowing us to return to the defined benefit plan so that we might be able to retire at some point in the future. In order for the continued success of this state organization it is necessary for us to feel we are valued for the service, dedication, and time we have provided.

Thank you for your time and attention to this matter.

Jami Olson

/ A

13.0405.03002

Title.

Prepared by the Legislative Council staff for
Senator Dever

March 27, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

Page 1, line 3, remove "and"

Page 1, line 5, after "system" insert "; and to provide an expiration date"

Page 8, after line 8, insert:

"SECTION 6. EXPIRATION DATE. This Act is effective through July 31, 2017,
and after that date is ineffective."

Renumber accordingly

March 26, 2013

#13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, after "54-52-01" insert ", and sections 54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3,"

Page 1, line 1, remove "and sections"

Page 1, line 2, remove "and sections"

Page 1, line 2, after the second comma insert "54-52.6-09,"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and"

Page 1, line 5, after "system" insert "; and to provide for a legislative management study"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional~~ increase ~~of annually~~ one percent, ~~beginning with the monthly~~ reporting period of January 2013, January 2014, and January 2015.
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The

state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015.~~ If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1."

Page 1, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the

fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase annually by~~ two percent increase, beginning with the reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. 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 5. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.
2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, ~~beginning with the monthly reporting period of January 2013, January 2014, and January 2015.~~
3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the

contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 6. 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.

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, and ~~with an additional increase of~~ annually by one percent, ~~beginning~~ with the reporting

period of January 2013, January 2014, and January 2015. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 7. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 8. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase annually by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014 and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 9. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one-half of one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment."

Page 3, after line 2, insert:

"SECTION 11. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee

increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ increases annually by two percent, ~~beginning~~ with the monthly reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 7, line 10, overstrike "with an additional increase of" and insert immediately thereafter "increases annually by"

Page 7, line 11, overstrike "beginning"

Page 7, line 11, after "the" insert "monthly"

Page 7, line 11, after "2013" insert ", January 2014, and January 2015"

Page 7, after line 26, insert:

"SECTION 13. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, ~~beginning~~ with the reporting period of January 2013, January 2014, and January 2015.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase ~~of~~ annually by one percent, ~~beginning~~ with the monthly reporting period of January 2013, January 2014, and January 2015. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.

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."

Page 8, after line 8, insert:

"SECTION 16. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly."

Page 8, remove line 8

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

Page 1, line 1, after "to" insert "create and enact a new section to chapter 54-52.6 of the North Dakota Century Code, relating to an election for members of the defined contribution plan to transfer to the public employees retirement system under chapter 54-52; to"

Page 8, after line 7, insert:

"SECTION 5. A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

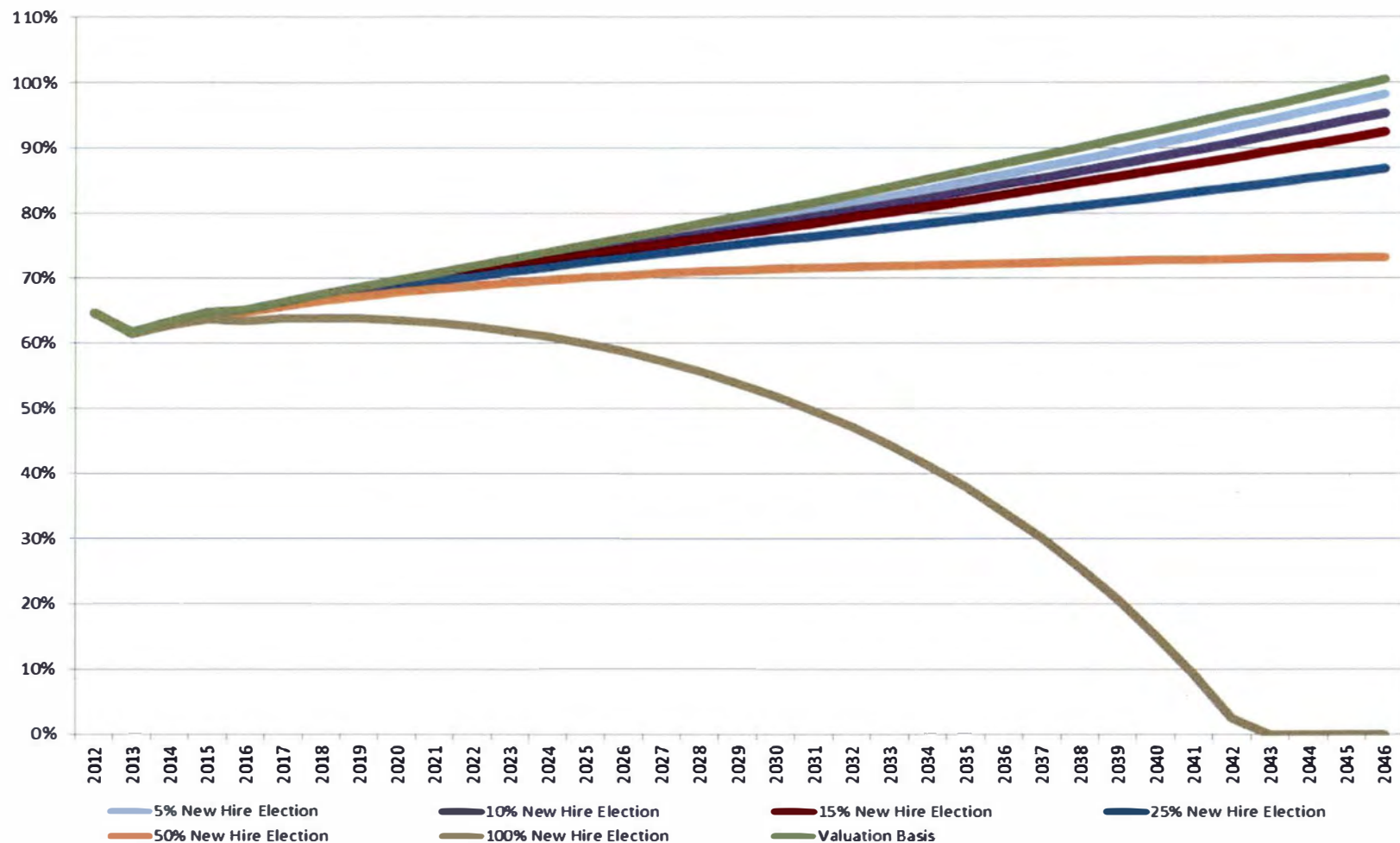
Election.

1. Notwithstanding any other section of law, the public employees retirement system board shall provide an opportunity for each eligible employee to elect in writing to terminate membership in the defined contribution plan in chapter 54-52.6 and elect to become a participating member in the public employees retirement system in chapter 54-52.
2. An eligible employee for purposes of this section is any actively participating member of the defined contribution plan as of July 1, 2013, and is an active employee on the date an election is made under this section. Eligible employee does not include participants who are not actively employed on the date of transfer of the funds, have taken a distribution from the defined contribution plan, are retired, are no longer actively employed or members who have a qualified domestic relations order on their account or other court order on their account.
3. The board shall establish a three-month election period beginning not later than December 1, 2013. 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 defined contribution plan. An eligible employee who makes and files a written election under this section ceases to be a member of the defined contribution plan upon receipt by the public employees retirement system of the account balance of the member's defined contribution plan in chapter 54-52.6 and waives all rights to that employee's accumulated fund balance under the defined contribution plan. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to make an election pursuant to this section, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the three-month period.

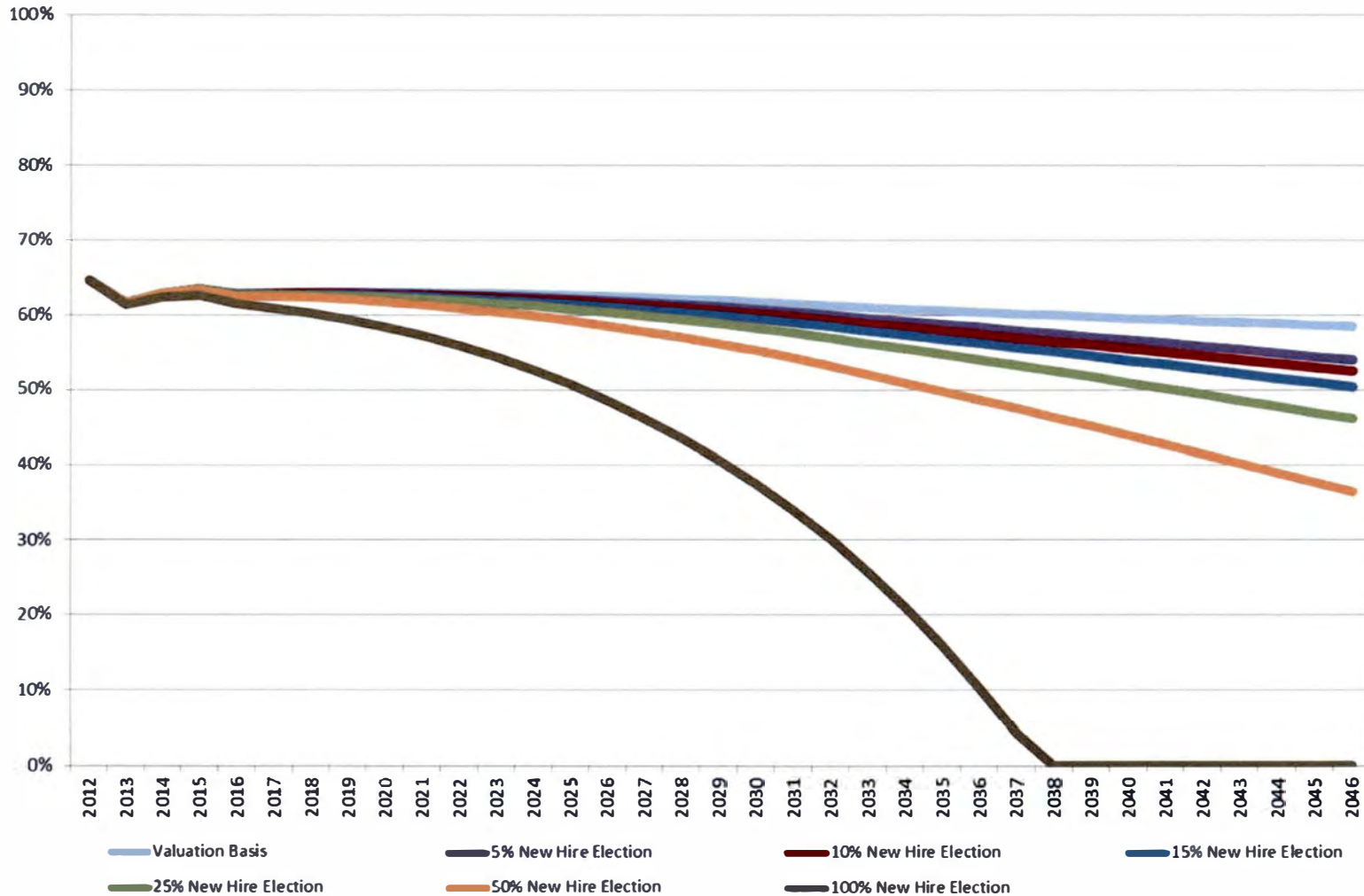
4. The public employees retirement system shall credit the transferring employee with the service credit and salary history as reflected on its electronic database.
5. The board shall determine the method by which a participating member may make a written election under this section. If the participating 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.
6. For an eligible employee who elects to terminate membership in the defined contribution plan pursuant to this section, the board shall transfer the member's accumulated fund balance less any rollovers from other plans made into the defined contribution plan to the public employees retirement system in chapter 54-52. Funds transferred from the defined contribution plan to the defined benefit plan pursuant to an election made under this section shall be recorded in the defined benefit plan as employee and employer contributions in the same manner as transferred by the defined contribution provider."

Renumber accordingly

**Projected Funded Ratios Under HB 1452 with Recovery Plan
New Hires May Elect to Participate in DC Plan (with No PERS DB Contribution)
(AVA Basis) – Main System**



Projected Funded Ratios Under HB 1452 without Recovery Plan New Hires May Elect to Participate in DC Plan (with No PERS DB Contribution) (AVA Basis) – Main System



has contributed to significant employment growth in the western half of the state, and state officials report that growth has been occurring around the rest of North Dakota as well.

The state's financial position is also very strong in our view. Fiscal 2012 ended with a generally accepted accounting principles general fund balance of \$2.91 billion, a \$1.5 billion increase from the previous year. Most of the increase was due to revenues exceeding budget projections, although the general fund also received a \$670 million transfer from the permanent oil tax trust fund when that fund was closed out. The unassigned portion of the fund balance was \$1.41 billion (96% of fiscal 2012 general fund expenditures) and an additional \$996.7 million was committed. Fiscal 2013 revenues continue to be strong, and officials project an ending general fund balance of \$1.4 billion, in addition to multiple other reserves such as \$700 million in the strategic investment and improvements fund and \$650 million in the budget stabilization fund, the maximum level under current law.

North Dakota's revenue collections have been strong and collections for the current biennium have significantly exceeded the original forecasts from April 2011. While general fund spending from direct oil taxes is limited to \$300 million per biennium, the strong economic activity driven by oil extraction has led to strong collections for sales taxes and personal and corporate income taxes. Through January 2013, general fund revenues for the 2011-2013 biennium were \$1.20 billion, or 41.5%, above the April 2011 forecast.

The administration and legislature recently updated the 2011-2013 biennial forecast, most recently with a legislative forecast in February 2013. Sales taxes are North Dakota's largest general fund revenue source, at 50% of the 2011-2013 biennial forecast revenue, followed by individual income taxes (20%), corporate income taxes (9%), and oil and gas production and extraction (7%). Officials project that the current federal sequestration cuts will have minimal impact on the state economy and state finances.

In our view, North Dakota's conservative practices and moderate infrastructure needs have kept its debt levels low. With the state's limited additional debt on the horizon, we believe annual debt service should remain very low as a percent of the operating budget; the carrying charge was only about 1% of expenditures in fiscal 2011.

Based on the analytical factors we evaluate for states, on a scale of '1.0' (strongest) to '4.0' (weakest), we have assigned a composite score of '1.5'.

Outlook

The positive outlook reflects what we view as North Dakota's strong government framework and management, strong budgetary performance, and enhanced reserves. If the state continues to improve pension funding levels and brings them more in line with 'AAA' rated peers, we could raise the rating to 'AAA'. Alternatively, if those actions do not improve pension funding to that level, we could revise the outlook on North Dakota back to stable. Downside risks for the rating include the potential for significant reductions in federal funding that currently flows to the state. Standard & Poor's will continue to monitor the federal consolidation efforts and the impact these will have on the state.

State General Obligation Ratings and Outlooks

State	Moody's		S&P		Fitch	
Alabama	Aa1	Stable	AA	Stable	AA+	Stable
Alaska	Aaa	Stable	AAA	Stable	AAA	Stable
Arizona	(Aa3)	Stable	(AA-)	Stable	*	N/A
Arkansas	Aa1	Stable	AA	Stable	*	N/A
California	A1	Stable	A	Stable	A-	Positive
Colorado	(Aa1)	Stable	(AA)	Stable	*	N/A
Connecticut	Aa3	Stable	AA	Stable	AA	Stable
Delaware	Aaa	Stable	AAA	Stable	AAA	Stable
DC	Aa2	Negative	A+	Stable	AA-	Stable
Florida	Aa1	Stable	AAA	Stable	AAA	Negative
Georgia	Aaa	Stable	AAA	Stable	AAA	Stable
Hawaii	Aa2	Stable	AA	Stable	AA	Stable
Idaho	(Aa1)	Stable	(AA+)	Stable	AA***	Stable
Illinois	A2	Negative	A-	Negative	A	Negative
Indiana	(Aaa)	Stable	(AAA)	Stable	(AAA)	Stable
Iowa	(Aaa)	Stable	(AAA)	Stable	(AAA)	Stable
Kansas	(Aa1)	Negative	(AA+)	Stable	AA***	Stable
Kentucky	(Aa2)	Negative	(AA-)	Stable	A+***	Stable
Louisiana	Aa2	Stable	AA	Stable	AA	Stable
Maine	Aa2	Negative	AA	Stable	AA	Stable
Maryland	Aaa	Negative	AAA	Stable	AAA	Stable
Massachusetts	Aa1	Stable	AA+	Stable	AA+	Stable
Michigan	Aa2	Stable	AA-	Stable	AA-	Positive
Minnesota	Aa1	Negative	AA+	Stable	AA+	Stable
Mississippi	Aa2	Stable	AA	Stable	AA+	Stable
Missouri	Aaa	Negative	AAA	Stable	AAA	Stable

State	Moody's		S&P		Fitch	
Montana	Aa1	Stable	AA	Stable	AA+	Stable
Nebraska	*	Stable	(AAA)	Stable	*	N/A
Nevada	Aa2	Stable	AA	Stable	AA+	Stable
New Hampshire	Aa1	Stable	AA	Stable	AA+	Stable
New Jersey	Aa3	Stable	AA-	Negative	AA-	Stable
New Mexico	Aaa	Negative	AA+	Stable	*	N/A
New York	Aa2	Stable	AA	Positive	AA	Positive
North Carolina	Aaa	Stable	AAA	Stable	AAA	Stable
North Dakota	(Aa1)	Stable	(AA+)	Positive	*	N/A
Ohio	Aa1	Stable	AA+	Stable	AA+	Stable
Oklahoma	Aa2	Stable	AA+	Stable	AA+	Stable
Oregon	Aa1	Stable	AA+	Stable	AA+	Stable
Pennsylvania	Aa2	Stable	AA	Negative	AA+	Negative
Puerto Rico	Baa3	Negative	BBB	Negative	BBB+	Negative
Rhode Island	Aa2	Negative	AA	Stable	AA	Stable
South Carolina	Aaa	Stable	AA+	Stable	AAA	Stable
South Dakota	*	Stable	(AA+)	Stable	AA***	Stable
Tennessee	Aaa	Stable	AA+	Positive	AAA	Stable
Texas	Aaa	Stable	AA+	Stable	AAA	Stable
Utah	Aaa	Stable	AAA	Stable	AAA	Stable
Vermont	Aaa	Stable	AA+	Positive	AAA	Stable
Virginia	Aaa	Negative	AAA	Stable	AAA	Stable
Washington	Aa1	Negative	AA+	Stable	AA+	Negative
West Virginia	Aa1	Stable	AA	Stable	AA+	Stable
Wisconsin	Aa2	Stable	AA	Stable	AA	Stable
Wyoming	*	N/A	(AAA)	Stable	*	N/A

Ratings in parentheses are issuer credit ratings or implied General Obligation ratings.

Note: Shaded box indicates recent rating action.

* No general obligation rating.

*** Lease revenue and/or Certificate of Participation ("COP") rating.

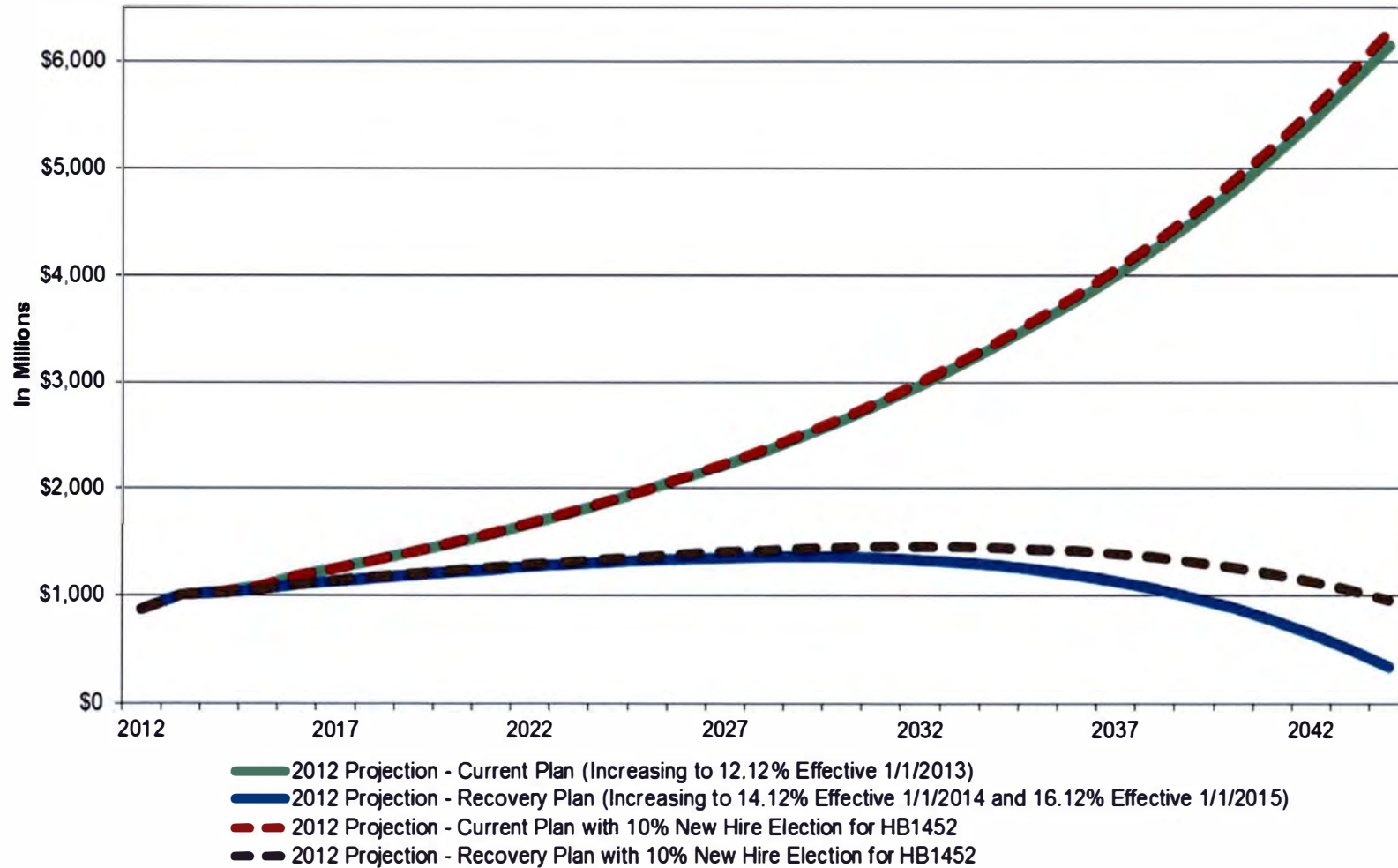
Sources: Fitch Ratings, Moody's Investors Service, Standard & Poor's Ratings Services; As of March 4, 2013.



Of the 13 states which have “AAA” ratings from S&P, all of them have defined benefit plans and all but 2 have defined contribution plans. The following table summarizes each state and which type or types of pensions they have.

State	Defined Benefit	Defined Contribution
Alaska	Yes	Yes
Delaware	Yes	No
Florida	Yes	Yes
Georgia	Yes	Yes
Indiana	Yes	Yes
Iowa	Yes	Yes
Maryland	Yes	Yes
Missouri	Yes	No
Nebraska	Yes	Yes
North Carolina	Yes	Yes
Utah	Yes	Yes
Virginia	Yes	Yes
Wyoming	Yes	Yes

PERS (Main System)
Projected Unfunded Actuarial Liability Under Current Plan
(Actuarial Accrued Liability less Actuarial Value of Assets)



6

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

Page 1, line 5, after "system" insert "; to provide an appropriation; and to provide an effective date"

Page 2, line 11, after "plan" insert "who elects to participate in the retirement plan under this chapter"

Page 2, line 12, remove "who is hired after July 30, 2013"

Page 6, line 3, replace "At the time of hire the" with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to rules and policies adopted by the board."

Page 6, remove lines 4 through 10

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, replace "In the case of an eligible employee" with "For an individual who elects to transfer"

Page 6, remove line 13

Page 6, line 14, remove "eligible employee transferring"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7 line 30, remove "new hires and"

Page 8, after line 8, insert:

"SECTION 6. APPROPRIATION. There is appropriated under any funds received by the public employees retirement system not otherwise appropriated the sum of \$22,000 or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 7. EFFECTIVE DATE. Section 6 of this Act becomes effective on July 1, 2013 and sections 1, 2, 3, 4, and 5 of this Act become effective on October 1, 2013.”

Renumber accordingly

April 3, 2013

/

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

In lieu of the amendments adopted by the Senate as printed on pages 988-995 of the Senate Journal, Engrossed House Bill No. 1452 is amended as follows:

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, remove the second comma

Page 1, line 2, replace "54-52.6-15" with "54-52.6-09"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and to repeal section 54-52.6-03 of the"

Page 1, remove line 4

Page 1, line 5, replace "public employees retirement system" with "to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015.
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been

paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1."

Page 1, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase annually by two percent increase,~~ beginning with the reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. 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 5. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.
2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent,

beginning with the monthly reporting period of January 2013, January 2014, and January 2015.

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.
4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 6. 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.

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, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 7. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and ~~with an additional increase of annually by~~ one percent, beginning with the monthly reporting period of January 2013, January

2014, and January 2015. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 8. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase annually by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014 and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 9. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one-half of one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment."

Page 2, line 12, replace "is hired after July 30, 2013" with "elects to participate in the retirement plan under this chapter"

Page 3, after line 2, insert:

"SECTION 11. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ increases annually by two percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, after line 26, insert:

"SECTION 13. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and ~~with an additional increase of~~ annually by one percent, beginning with the reporting period of January 2013, January 2014, and January 2015.

2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase ~~of~~ annually by one percent, beginning with the monthly reporting period of January 2013, January 2014, and January 2015. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.
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."

Page 7, remove lines 27 through 31

Page 8, replace lines 1 through 8 with:

"SECTION 14. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall

consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 15. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 16. EFFECTIVE DATE. Sections 3, 10, and 12 of this Act become effective on October 1, 2013.

SECTION 17. EXPIRATION DATE - SUSPENSION. Sections 3, 10, and 12 of this Act are effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03 as it existed on September 30, 2013, becomes effective on August 1, 2017."

Renumber accordingly

April 3, 2013

2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

In addition to the amendments adopted by the Senate as printed on pages 988-995 of the Senate Journal, Engrossed House Bill No. 1452 is amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 54-52.6 of the North Dakota Century Code, relating to an election for members of the defined contribution retirement plan to transfer to the public employees retirement system; to"

Page 7, after line 26, insert:

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

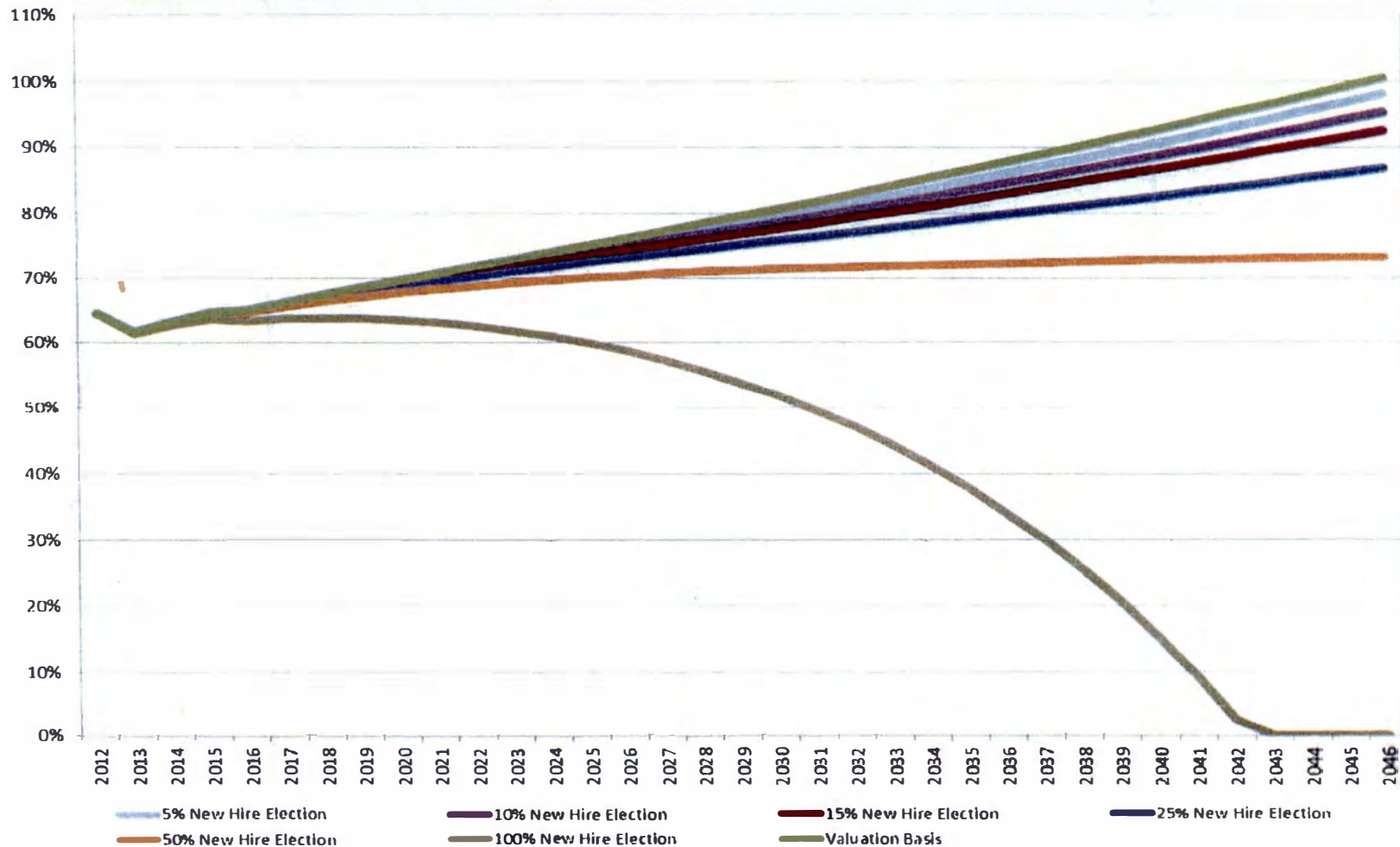
Election.

1. Notwithstanding any other provision of law, the public employees retirement system board shall provide an opportunity for each eligible employee to elect in writing to terminate membership in the defined contribution retirement plan under this chapter and elect to become a participating member in the public employees retirement system under chapter 54-52.
2. For purposes of this section, an eligible employee is any actively participating member of the defined contribution plan as of July 1, 2013, and is an active employee on the date an election is made under this section. Eligible employee does not include participants who are not actively employed on the date of transfer of the funds, have taken a distribution from the defined contribution plan, are retired, are no longer actively employed, or members who have a qualified domestic relations order or other court order on their account.
3. The board shall establish a three-month election period beginning not later than December 1, 2013. 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 defined contribution plan. An eligible employee who makes and files a written election under this section ceases to be a member of the defined contribution plan upon receipt by the public employees retirement system of the account balance of the member's defined contribution plan under this chapter and waives all rights to that employee's accumulated fund balance under the defined contribution plan. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to make an election pursuant to this section, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the three-month period.
4. The public employees retirement system shall credit the transferring employee with the service credit and salary history as reflected on its electronic database.

5. The board shall determine the method by which a participating member may make a written election under this section. If the participating 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.
6. For an eligible employee who elects to terminate membership in the defined contribution plan pursuant to this section, the board shall transfer the member's accumulated fund balance less any rollovers from other plans made into the defined contribution plan to the public employees retirement system under chapter 54-52. Funds transferred from the defined contribution plan to the defined benefit plan pursuant to an election made under this section must be recorded in the defined benefit plan as employee and employer contributions in the same manner as transferred by the defined contribution provider."

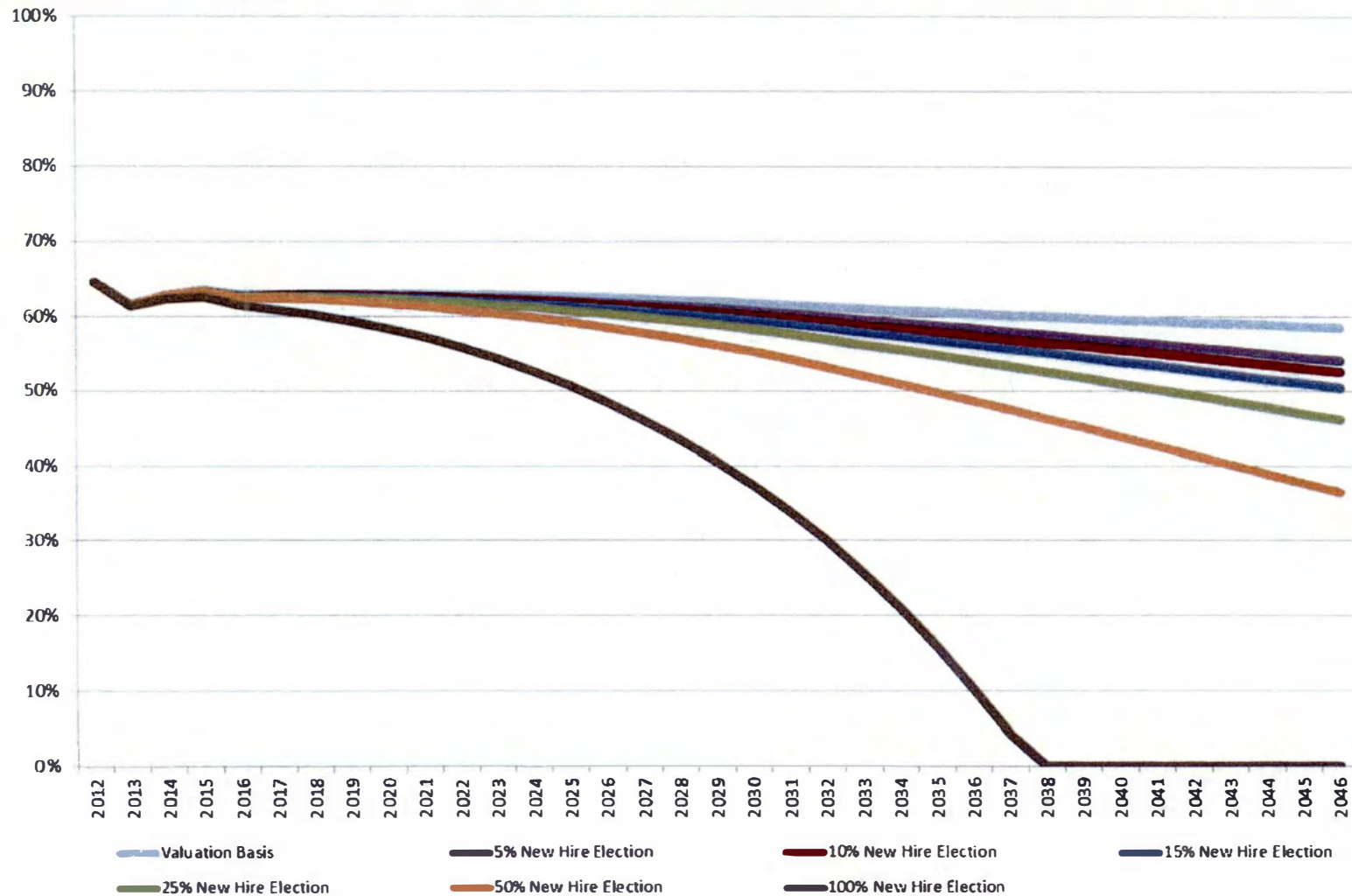
Renumber accordingly

**Projected Funded Ratios Under HB 1452 with Recovery Plan
New Hires May Elect to Participate in DC Plan (with No PERS DB Contribution)
(AVA Basis) – Main System**

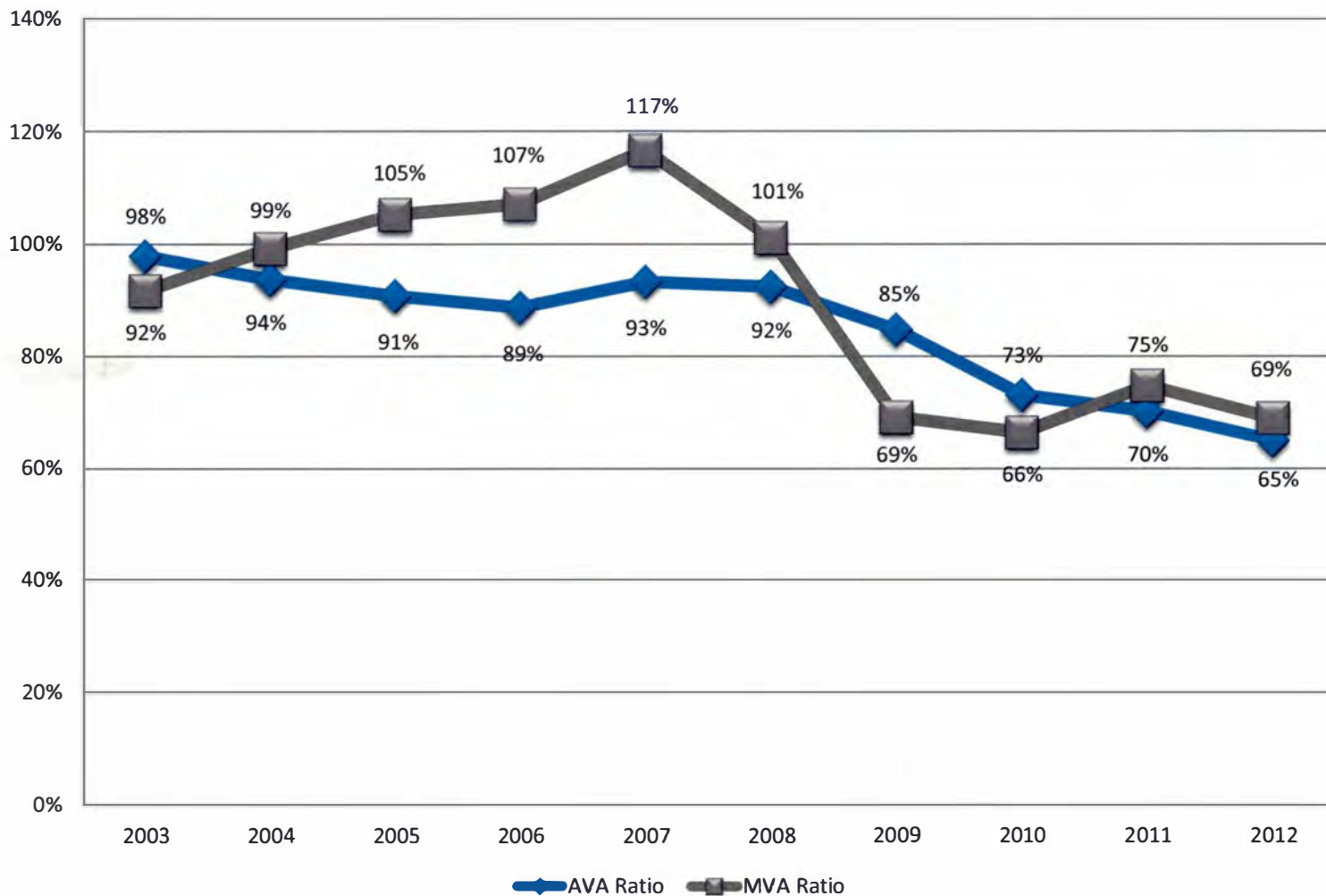


Attachment 1
1452
Can Perance

Projected Funded Ratios Under HB 1452 without Recovery Plan New Hires May Elect to Participate in DC Plan (with No PERS DB Contribution) (AVA Basis) – Main System

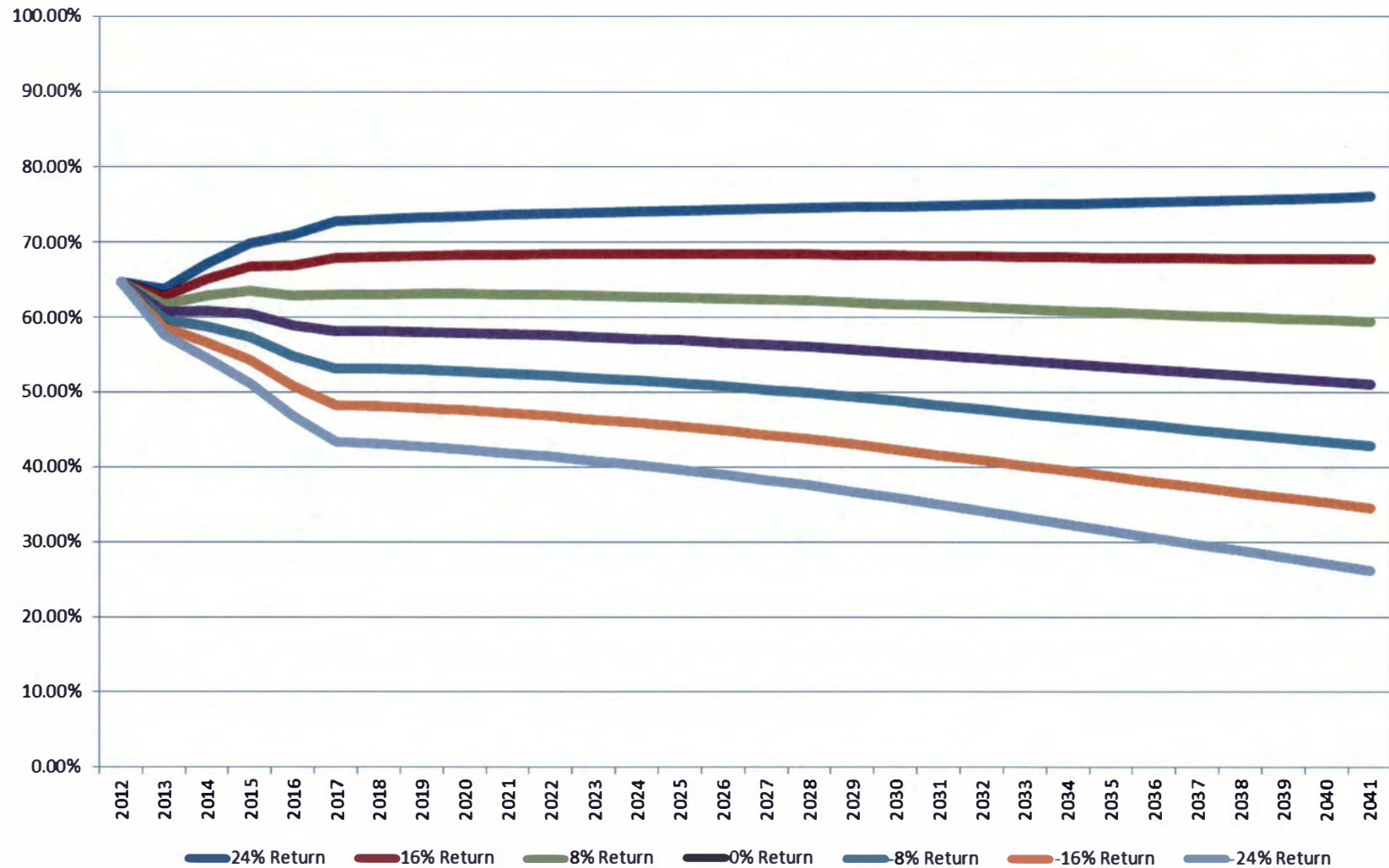


Funded Ratios – Main System

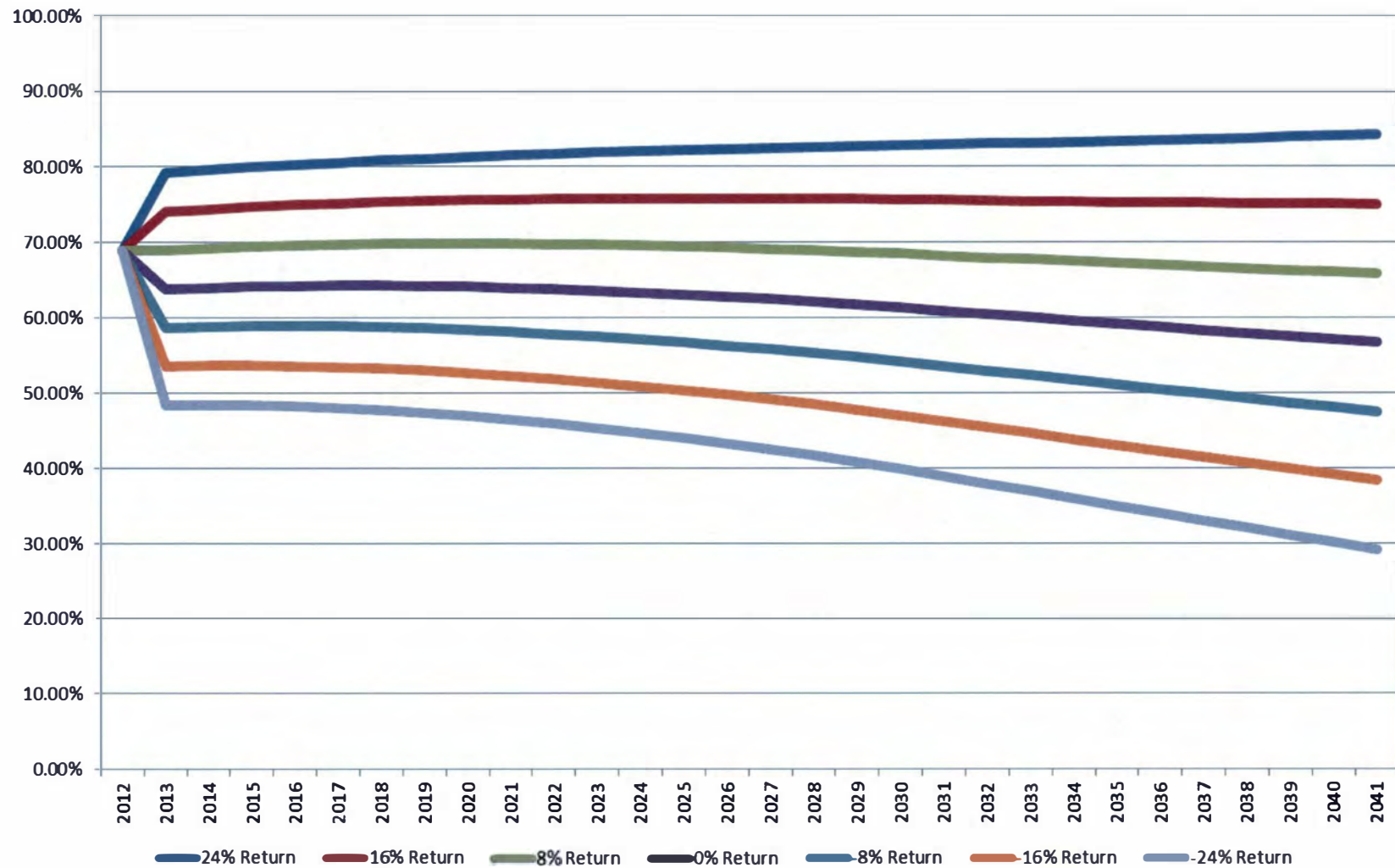


Attachment 1
1452
Conference
4-1-13 pm

Projected Funded Ratios (AVA Basis) – Main System



Projected Funded Ratios (MVA Basis) – Main System



Attachment
4-22-13

**Considerations of HB 1452
4/20/2013**

The bill currently:

- Provides for a Defined Contribution option for new state employees as an irreversible decision.
- Includes a sunset clause in 2017 of the Defined Contribution option to evaluate where it is at.
- Provides for an increase in the main PERS plan contribution rates of 1% on the employee and the employer side for each year of the biennium. Other plans within the PERS plan make similar, but different, adjustments.
- Provides for a study of pension plans with consideration of the implications of transitioning to a Defined Contributions plan. The study is to be done by a committee other than the Employee Benefits Program committee.

Proposed amendments will:

- Reduce the contribution rate increases to 1% on the employee and the employer side to only the first year of the biennium.
- Provide that the increased rates will revert back when the plan reaches a 100% funding level.

Other considerations:

- On the Defined Benefit side, the contribution rates are adjusted as necessary to insure the stability of the fund. The benefits are defined, but the contributions vary. On the Defined Contribution side, the contributions are defined and the benefits vary at the risk of the employee. If there is a desire to reduce the contributions later, it is necessary to spell that out up front.

Options include:

- A. Start the program at lower contribution rates.

- B. Apply the amounts over the maintenance level of the plan to the recovery on the Defined Benefit side.
 - C. Apply the employer side of the contribution over the maintenance level to the recovery on the Defined Benefit side.
- The unclassified employees who previously opted into the Defined Contributions plan would like to return to Defined Benefits. Their return would have a positive impact on the Defined Benefit plan. Should we give that consideration?



Global Credit Portal

RatingsDirect®

July 26, 2010

Top 10 Management Characteristics Of Highly Rated Credits In U.S. Public Finance

Primary Credit Analyst:

Robin Prunty, New York (1) 212-438-2081; robin_prunty@standardandpoors.com

Secondary Credit Analysts:

Karl Jacob, New York (1) 212-438-2111; karl_jacob@standardandpoors.com

Horacio Aldrete-Sanchez, Dallas (1) 214-871-1426; horacio_aldrete@standardandpoors.com

Table Of Contents

Top 10 List

Related Criteria And Research

Top 10 Management Characteristics Of Highly Rated Credits In U.S. Public Finance

(Editor's Note: This is an update of the version of this article published June 13, 2008.)

Standard & Poor's Ratings Services has widely disseminated to investors and issuers its approach for assigning credit ratings in U.S. public finance. We have also developed representative ranges for key ratios that factor into our analysis of tax-backed credit quality (see "Key General Obligation Ratio Credit Ranges – Analysis Vs. Reality," published April 2, 2008 on RatingsDirect on the Global Credit Portal). These ratios are the foundation of the quantitative measures Standard & Poor's uses when assigning a credit rating. We use ratios and comparisons to fine-tune our credit analysis and help make credit distinctions. For bond issuers, we often use credit ratios as a framework for making comparisons.

In addition to quantitative factors, our view of qualitative factors inform our credit analysis. Our view of management factors, administrative characteristics and other structural issues facing a government entity may be an overriding factor in a rating outcome. We view management as contributing significantly to many of the individual credit ratios, which can positively affect ratings in a number of ways (see Financial Management Assessment criteria). Conversely, we believe that the lack of strong management can be a significant factor in a weak credit profile. In our opinion, the economy remains a key factor in assigning a rating level, but our view of management and the institutional framework is usually one of the deciding factors in fine-tuning the rating. Our opinion of the management or administrative structure of a government can move a rating up or down more significantly and swiftly than any other element of a credit review.

When assessing management, Standard & Poor's analyzes the political and fiscal framework that governs it, as well as the day-to-day management procedures and policies. There could be a strong management team in place, but if there is political instability or lack of political will to make difficult decisions, we have found that management will be ineffective in many cases. Standard & Poor's also focuses on the "whole of government." Our view of oversight and management controls covering the disparate operations of a government with a focus on accountability at each department or function is critical to strong credit ratings.

The "Top 10" list of management characteristics associated with Standard & Poor's highly rated credits is generally applicable to other enterprise operations of government such as water, sewer, or solid waste. The relative importance of these factors may vary from credit to credit. Our view of credibility is an important part of a rating review process and management assessment. Every government has challenges. We believe that identifying problems or issues, and detailing how these will be addressed establishes credibility and greater transparency in the rating process.

Top 10 List

1. An established "rainy day"/budget stabilization reserve.

A formalized financial reserve policy is a consistent feature of most of Standard & Poor's highly rated credits. Historically, such a policy has been standard operating procedure for some governments for decades. Others focused attention on this following the recession of the early 1990s, and again in 2001 when many regions of the country experienced sustained revenue weakness that required severe budget reduction measures. We expect that the recent

financial crisis and recession will likely further increase the importance that governments will place on the build up and maintenance of financial reserves. In our view, reserves provide financial flexibility to react to budget shortfalls or other unforeseen circumstances in a timely manner. No one level or type of reserve is considered optimal from Standard & Poor's perspective. We have seen many different types of reserves factor into an improved government credit profile. In our view, some important factors government officials generally consider when establishing a reserve are:

- The government's cash flow/operating requirements;
- The historic volatility of revenues and expenditures through economic cycles;
- Susceptibility to natural disaster events;
- Whether the fund will be a legal requirement or an informal policy;
- Whether formal policies are established outlining under what circumstances reserves can be drawn down; and
- Whether there will be a mechanism to rebuild reserves once they are used.

In our view, the use of budget stabilization reserves is not in and of itself a credit weakness. The reserves are in place to be used. However, we believe that a balanced approach to using reserves is important in most cases, because full depletion of reserves in one year without any other budget adjustments creates a structural gap in the following year if economic trends continue to be weak.

2. Regular economic and revenue updates to identify shortfalls early.

In our experience, having a formal mechanism to monitor economic trends and revenue performance at regular intervals is a key feature of stable financial performance. This is particularly true in the case of states, which we have observed tend to exhibit revenue declines during economic downturns because they rely on personal income tax, sales tax, corporate income tax, and other economically sensitive sources. We believe that evaluating historical performance of certain revenues is important to this analysis because each government will have different leading or lagging economic indicators that signal potential revenue variance issues based on their economic structure. The earlier revenue weakness is identified in the fiscal year, the more effective, in our view, the budget balancing response can be. We think it is important to monitor upside growth as well. In our opinion, a surge in revenues is important to understand as well to determine if the trend is an aberration or something that is likely to sustain and require a mid-year adjustment.

3. Prioritized spending plans and established contingency plans for operating budgets.

We have found that contingency planning is an ongoing exercise for most highly rated governments. We have observed that budgets tend to inflate in good times: governments may expand services, fund generous employee pay packages, and accelerate financing for quality-of-life projects that we believe would most likely not be considered in a slow growth or declining economic environment. In our analysis, we consider whether a government has contingency plans and options to address budget imbalance when it occurs. This would include an analysis of the following:

- What part of the budget is discretionary;
- What spending areas can be legally or practically reduced;
- The time frame necessary to achieve reductions of various programs;
- Where revenue flexibility exists; and
- A course of action on the revenue side under various economic scenarios.

4. A formalized capital improvement plan in order to assess future infrastructure requirements.

Historically, highly rated credits typically have had a long-term capital improvement program that comprehensively assesses the infrastructure requirements of the government and a plan to fund these requirements over a five or more years. We have found that having a realistic plan that is comprehensively developed and updated annually is a common characteristic of most highly rated local governments. We believe that developing these programs for state government is difficult because the scale of projects and the scope of responsibilities are very broad. Many have accomplished this task despite these obstacles, which we view as a positive credit factor. In our analysis, we also consider the extent to which a government has incorporated the impact of capital projects on the operating budget for the short- and long-term. We see governments as continuing to move into non-traditional projects, whether they are economic development (contributing infrastructure to a developer or industry) or quality of life (stadiums and parks, to cite a few). Based on what we have seen, these projects generally come with an upfront budget cost, but can have multiyear budget impacts. Projects can be sold as self-supporting, but in our view may potentially be a drain on taxing resources.

5. Long-term planning for all liabilities of a government, including pension obligations, OPEB and other contingent obligations and comprehensive assessment of future budgetary risks.

The nature of government services can create unexpected contingent obligations, or "off balance sheet" liabilities that could ultimately affect taxing resources. Unfunded pension liabilities have been disclosed in detail for years and we believe this disclosure has enhanced the transparency of funding obligations in both the current year, and future years. We believe that disclosure of this liability has also focused attention and planning on ways to improve funding levels over time. We believe that GASB Statement 45, which requires disclosure of liabilities associated with other post employment benefits (OPEB), should also highlight some significant future liabilities for many governments. Given the rate of growth in health insurance costs and current demographic trends, greater transparency in this area should allow for advance development of funding and management solutions, in our opinion. We believe that other areas of government operations and services have also resulted in budget pressure that may fall out of the traditional general fund focus. In our view, hospital and nursing home operations, as well as various other enterprise operations have caused funding challenges at the local level, even when there is no clear legal responsibility for the government to provide funding. At the state level, we believe that local government fiscal difficulties can increase and become a funding challenge for the state.

6. A formal debt management policy in place to evaluate future debt profile.

Over the past decade, we have seen many state and local governments develop debt management policies and debt affordability measures. The impact of these policies on a long-term credit rating will be dependent on our view of how the policies are established and used by the government, and the track record in adhering to the affordability parameters established in the policies. We believe the process enhances the capital budgeting and related policy decisions regarding debt issuance and amortization.

7. A pay-as-you-go financing strategy as part of the operating and capital budget.

In our opinion, pay-as-you-go financing can be a sound financing policy. Not only does it lower debt service costs, but also it provides operating budget flexibility when the economy or revenue growth slows. We see the use of pay-as-you-go financing as a more significant funding option when tax revenue growth is uncertain, given the fact that pay-as-you-go financing may provide additional budget flexibility in an uncertain revenue environment. Depending on the government's overall balance sheet profile, we believe that a better match can be achieved between non-recurring revenues and non-recurring expenditures if this type of financing is used.

8. A multiyear financial plan in place that considers the affordability of actions or plans before they are part of the annual budget.

In our analysis, we consider whether this plan is comprehensive. During a sustained economic recovery, we see program enhancements and tax reductions as typical. We believe that pension funds that performed at record levels provide incentive to expand or enhance benefits. Elected officials will be ultimately responsible for the decisions necessary to restore out-year budget balance. We consider multiyear planning as an important part of this process. In our view, even when there is legal authority to raise taxes, there may not be a practical ability to do so because it is politically unpopular. Standard & Poor's realizes that the out-years of a multiyear plan are subject to significant change. They provide a model to evaluate how various budget initiatives affect out-year revenues, spending and reserve levels. These plans will often have out-year gaps projected, which we believe allows governments to work out, in advance, the optimal method of restoring fiscal balance.

9. Effective management and information systems.

In our analysis, we consider investing in systems that improve the efficiency and effectiveness of a government unit and enhance overall service delivery as a positive financial management tool. We believe that investment in financial management and information technology infrastructure has been significant during the past decade. To the extent that these changes improve financial reporting and monitoring capabilities, we view them as enhancing transparency and as a positive credit factor.

10. A well-defined and coordinated economic development strategy.

In our experience, economic development programs have expanded rapidly over the last 20 years. We believe that the question for many state and local governments now is not whether there should be a formal economic development program, but rather how significant a resource commitment should be dedicated to running these programs and offering incentives. These are government policy decisions involving cost benefit analysis that are generally outside the credit rating process. However, if these economic development programs and strategies create employment, enhance diversification, and generate solid income growth, they could have a positive effect on a government credit rating over the long-term. To the extent that there is a net revenue benefit to a government, it could also be a positive credit factor. We have seen economic development strategies increasingly become regional in nature, with a more coordinated approach between state and local governments.

Related Criteria And Research

- USPF Criteria: GO Debt, Oct. 12, 2006
- USPF Criteria: Key General Obligation Ratio Credit Ranges – Analysis Vs. Reality, April 2, 2008
- USPF Criteria: Financial Management Assessment, June 27, 2006

Copyright (c) 2010 by Standard & Poor's Financial Services LLC (S&P), a subsidiary of The McGraw-Hill Companies, Inc. All rights reserved.

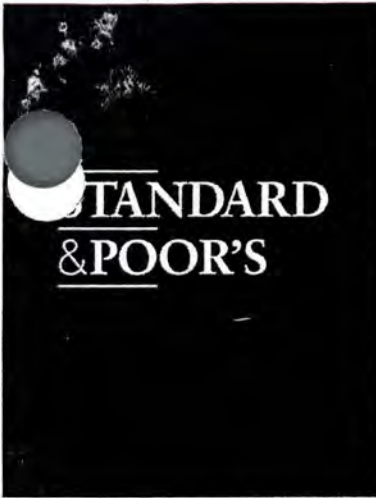
No content (including ratings, credit-related analyses and data, model, software or other application or output therefrom) or any part thereof (Content) may be modified, reverse engineered, reproduced or distributed in any form by any means, or stored in a database or retrieval system, without the prior written permission of S&P. The Content shall not be used for any unlawful or unauthorized purposes. S&P, its affiliates, and any third-party providers, as well as their directors, officers, shareholders, employees or agents (collectively S&P Parties) do not guarantee the accuracy, completeness, timeliness or availability of the Content. S&P Parties are not responsible for any errors or omissions, regardless of the cause, for the results obtained from the use of the Content, or for the security or maintenance of any data input by the user. The Content is provided on an "as is" basis. S&P PARTIES DISCLAIM ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, FREEDOM FROM BUGS, SOFTWARE ERRORS OR DEFECTS, THAT THE CONTENT'S FUNCTIONING WILL BE UNINTERRUPTED OR THAT THE CONTENT WILL OPERATE WITH ANY SOFTWARE OR HARDWARE CONFIGURATION. In no event shall S&P Parties be liable to any party for any direct, indirect, incidental, exemplary, compensatory, punitive, special or consequential damages, costs, expenses, legal fees, or losses (including, without limitation, lost income or lost profits and opportunity costs) in connection with any use of the Content even if advised of the possibility of such damages.

Credit-related analyses, including ratings, and statements in the Content are statements of opinion as of the date they are expressed and not statements of fact or recommendations to purchase, hold, or sell any securities or to make any investment decisions. S&P assumes no obligation to update the Content following publication in any form or format. The Content should not be relied on and is not a substitute for the skill, judgment and experience of the user, its management, employees, advisors and/or clients when making investment and other business decisions. S&P's opinions and analyses do not address the suitability of any security. S&P does not act as a fiduciary or an investment advisor. While S&P has obtained information from sources it believes to be reliable, S&P does not perform an audit and undertakes no duty of due diligence or independent verification of any information it receives.

S&P keeps certain activities of its business units separate from each other in order to preserve the independence and objectivity of their respective activities. As a result, certain business units of S&P may have information that is not available to other S&P business units. S&P has established policies and procedures to maintain the confidentiality of certain non-public information received in connection with each analytical process.

S&P may receive compensation for its ratings and certain credit-related analyses, normally from issuers or underwriters of securities or from obligors. S&P reserves the right to disseminate its opinions and analyses. S&P's public ratings and analyses are made available on its Web sites, www.standardandpoors.com (free of charge), and www.ratingsdirect.com and www.globalcreditportal.com (subscription), and may be distributed through other means, including via S&P publications and third-party redistributors. Additional information about our ratings fees is available at www.standardandpoors.com/usratingsfees.

The McGraw-Hill Companies



Global Credit Portal RatingsDirect®

May 11, 2010

Criteria | Governments | Request for Comment:

Methodology For U.S. State Ratings

Primary Credit Analysts:

Robin Prunty, New York (1) 212-438-2081; robin_prunty@standardandpoors.com
James Wiemken, Chicago (1) 312-233-7005; james_wiemken@standardandpoors.com
Horacio Aldrete-Sanchez, Dallas (1) 214-871-1426; horacio_aldrete@standardandpoors.com

Chief Credit Officer:

Mark Adelson, New York (1) 212-438-1075; mark_adelson@standardandpoors.com

Senior Credit Officer, Corporates and Governments:

Colleen Woodell, New York (1) 212-438-2118; colleen_woodell@standardandpoors.com

Table Of Contents

SCOPE OF THE CRITERIA

PROPOSAL SUMMARY

SPECIFIC QUESTIONS FOR WHICH WE ARE SEEKING A RESPONSE

IMPACT ON OUTSTANDING RATINGS

RESPONSE DEADLINE

METHODOLOGY

Overall Analytic Framework For U.S. States

Government Framework

Financial Management

Economy

Budgetary Performance and Flexibility

Debt And Liability Profile

Related Criteria And Research

Criteria | Governments | Request for Comment:

Methodology For U.S. State Ratings

Standard & Poor's Ratings Services is proposing to update its methodology and assumptions for rating United States state governments. We are publishing this article to help market participants better understand our proposed approach to assigning state ratings. This methodology would replace portions of "U.S. Public Finance Criteria: GO Debt" published Oct. 12, 2006 and is related to "Principles Of Corporate And Government Ratings," published June 26, 2007.

Standard & Poor's publicly rates all 50 states based on our qualitative and quantitative analysis of a range of financial, economic, and institutional factors. We are proposing to separate the criteria for our review of states from the broader general obligation (GO) criteria article in order to provide greater clarity and detail in explaining our methodology and the quantitative and qualitative factors that influence state ratings. For this reason, and to enhance the comparability and transparency of our ratings, we are now requesting comment on the proposal described herein.

In this article, "rating" refers to the rating assigned to GO debt of U.S. states or the issuer credit rating if no GO debt is outstanding. The elements of the proposal are found in "Methodology," below.

SCOPE OF THE CRITERIA

This criteria would apply to all U.S. state governments.

PROPOSAL SUMMARY

We are proposing to keep the same general analytic framework to rate U.S. states, which results from a combination of quantitative and a qualitative analysis around five main factors:

- Government framework;
- Financial management;
- Economy;
- Budgetary performance and flexibility; and
- Debt and liability profile.

We are also proposing to increase the transparency of our rating methodology through the following:

- To calibrate more precisely each of the above five rating factors based on our view of quantitative and qualitative elements, in order to improve the comparability of our ratings globally; and
- To explain in a transparent manner how the rating for each state is determined from the combination of the various rating factors.

SPECIFIC QUESTIONS FOR WHICH WE ARE SEEKING A RESPONSE

- Do you agree with separating the GO criteria for U.S. states from the broader GO criteria article that we have historically published covering all levels of governments, in order to provide greater transparency?
- Do you agree that the proposed rating factors and individual metrics focus on the key factors affecting state government creditworthiness? Can you comment on the advantages and disadvantages of this approach?
- Do you agree with scoring each individual metric in order to establish an overall score for each factor and translating that score to a rating? Do you agree that it results in a more transparent approach?

IMPACT ON OUTSTANDING RATINGS

We do not expect any significant rating changes as a result of this criteria update.

RESPONSE DEADLINE

We encourage market participants to submit written comments on the proposal and the above questions by June 11, 2010 to CriteriaComments@standardandpoors.com.

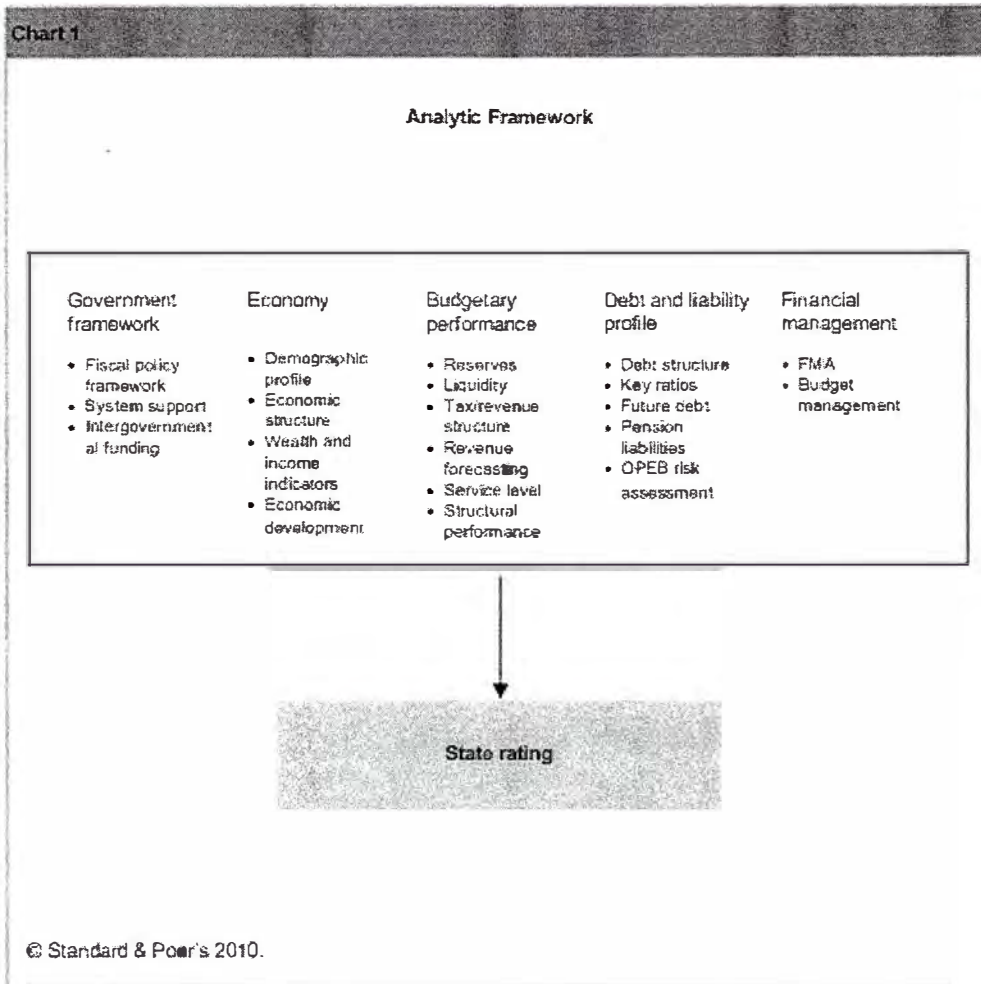
METHODOLOGY

Overall Analytic Framework For U.S. States

Standard & Poor's assigns credit ratings to U.S. states based on our qualitative and quantitative analysis of a range of financial, economic, managerial, and institutional factors. Our overall analytic framework would center around the following factors:

- Government framework;
- Financial management;
- Economy;
- Budgetary performance and flexibility; and
- Debt and liability profile.

Each of these factors would be assessed utilizing various credit metrics. The metrics are all scored on a scale from 1 (the strongest) to 4 (the weakest). For each metric there may be several indicators evaluated to develop the metric score. In this case we would score each indicator individually on the same scale and average the scores to develop the score for the metric. The metrics for each factor would be averaged in order to develop a composite score for each factor. The scores for the five factors are combined and averaged to arrive at an overall score which is then translated to the rating as illustrated in Table 1. We will weight each of these factors equally when assessing the individual state credit rating.



The table below indicates the state rating level that would most likely be achieved based on the overall score assigned to each state, with one notch flexibility up or down.

Table 1

Rating Levels And Scores	
Score	Rating
1-1.5	AAA
1.6-1.8	AA+
1.9-2	AA
2.1-2.2	AA-
2.3-2.4	A+
2.5-2.6	A
2.7-3	A-
3.1-4	BBB Category

Other factors impacting state ratings

The following factors may impact or override the rating conclusions reached on the methodology outlined herein.

Notching down factors. If one of the metrics carries a score that is substantially worse than the average or is assessed at '4' for the budgetary performance or debt and liabilities metrics, the rating could be one or two notches lower than the rating indicated in table 1 and the methodology outlined herein. A weak liquidity position or a high level of risk relating to derivatives/variable rate debt would be examples.

Overriding factors. As mentioned above, we view U.S. states as generally having a strong commitment to their legal obligation to pay debt despite difficult or stressful economic cycles. Any change in this willingness to support debt would translate to a rating far below what is indicated. In addition, if we think liquidity deteriorates suddenly and access to the capital markets is questionable, a rating could also be more than a category below what is indicated in table 1 and the methodology outlined below.

Impact of institutional framework on state ratings

Under the U.S. Constitution, state governments have broad powers to establish their own tax structures and expenditure responsibilities and therefore possess unique administrative and financial flexibility. State public finance systems are in our view mature and accounting standards are well-developed, contributing to a high level of transparency. States typically have balanced-budget requirements and well-developed revenue and expenditure monitoring policies and procedures. The priority of payment for debt service is generally defined and capital market access is also generally well-established. As noted above, we believe U.S. states generally have a strong commitment to their legal obligation to pay debt despite difficult economic cycles. U.S. states may not file for bankruptcy under the U.S. Bankruptcy Code. We believe that these factors contribute to a strong institutional framework and a strong debt repayment history for the sector. These unique characteristics, considered under our analytic methodology for rating states, generally contribute to a high credit profile for the sector, typically in the 'AA' category or higher.

In differentiating state ratings above the 'AA' rating level or identifying circumstances in which ratings might be below the 'AA' category, our methodology would include a review of various quantitative and qualitative measures relating to management and government framework, financial performance and flexibility, economy, and debt and liability profile. Under the proposed methodology, our quantitative analysis of states would incorporate a review of a number of measures of financial and economic performance as well as debt and other liabilities. Our qualitative analysis would assess the government framework and how we think it affects state powers, the political environment, and management policies and practices. While many of the quantitative measures tend to be cyclical over time, we believe the qualitative aspects of the criteria allow for rating stability through economic cycles.

Relationship to sovereign rating

State ratings are not directly linked to the rating of the U.S. The rating on a state or local government can be higher than a sovereign rating (see "Methodology: Rating A Regional Or Local Government Higher Than Its Sovereign," published Sept. 9, 2009) if, in our view, the individual credit characteristics remain stronger than those of the sovereign in a scenario of economic or political stress. Other factors that would be reviewed include what we consider to be a predictable institutional framework that limits the risk of negative sovereign intervention and the ability to mitigate negative intervention from the sovereign due to high financial flexibility and independent treasury management.

Stress scenarios and calibration of state ratings

To calibrate state ratings, Standard & Poor's uses the stress scenarios associated with each rating category level, as presented in Appendix IV of the criteria article "Understanding Standard & Poor's Rating Definitions," published

June 3, 2009, (hereafter called the "stress scenario article").

Given the institutional framework described above, we believe that a state should be able to attain at least a 'AA' rating level, because we expect it should be able to meet its financial obligations, even in a very severe stress scenario, in which GDP could decline up to 15%, unemployment could go up to 20% and stock markets could decline up to 70% as defined in the stress scenario article.

We base our opinion on the fact that states have a broad range of options to mitigate the impact of a very severe economic crisis. These options include revenue adjustments, managing disbursements, and accessing reserves or other forms of liquidity when necessary in order to restore budgetary balance. In this context, we believe that a state with an above-average credit profile (generally representative of a wealthy and well-diversified economy, good management, good liquidity, and flexibility) should be able to withstand this level of stress and still meet its financial obligations.

Government Framework

We believe that the government framework in place for a state is an important factor in establishing a rating. Each state has a unique government structure and political environment that can affect its powers as defined by federal and state law and influence its fiscal position. The three metrics we use to assess government framework are: fiscal policy framework; system support (federal government); and intergovernmental funding framework (local government).

Fiscal policy framework

The framework within which a state taxes, spends, and issues debt influences a state's ability to manage through various economic stress scenarios in our opinion. When evaluating the fiscal policy framework of a state we analyze both constitutional and statutory provisions around the following:

- **Balanced budget requirement:** In contrast to the federal government and many local governments, most U.S. states are required by statute or their constitution to propose or adopt a balanced budget. Others are required to ensure balance during the fiscal year. In our opinion, this requirement tends to force budgetary discipline.

Table 2

Balanced Budget Requirement	
Score	
1	Constitutional/statutory requirement for budget balance when introduced and adopted. The budget is required to stay in balance during the year.
2	Budget must be balanced when introduced or when adopted but no legal requirement to maintain balance during the year.
3	There is no requirement to propose or adopt a balanced budget but there is a track record of doing so.
4	No balanced budget requirements exist.

- **Tax structure:** Most states enjoy the flexibility to set and modify tax rates, deductions, exemptions, and collection dates. If this can be achieved without major constitutional, legal, or administrative difficulty, these discretionary powers can quickly and favorably influence a state's fiscal condition.

Table 3

Tax Structure	
Score	
1	State has legal autonomy to raise taxes, revenues (rate and base); no constitutional constraint or extraordinary legislative threshold.
2	There are some legal restrictions on adjusting certain taxes or revenues but not all revenues.
3	There are constraints (constitutional, high legislative threshold, voter approval) to adjusting taxes or revenues.
4	There are multiple constraints including constitutional, statutory, and voter approval requirements relating to all key revenue sources.

- Disbursement autonomy: While states generally have broad service responsibilities, most enjoy considerable discretion in establishing funding levels for state assistance, shifting responsibilities to local government and establishing or changing disbursement dates for various programs. This affords a high level of control over budgets and cash flow which can positively affect fiscal standing.

Table 4

Disbursement Autonomy	
Score	
1	High degree of flexibility in adjusting disbursements; extends to nearly all program areas.
2	Flexibility exists but may not be for all program areas.
3	Flexibility is constrained; contributes to budgetary inflexibility.
4	Flexibility to adjust disbursements is extremely limited.

- Voter initiatives: A state's autonomy can be limited and this can affect relative credit standing in our view. Where decisions about specific tax or revenue levels, spending allocations, and debt issuance are placed in the hands of the electorate, states have reduced flexibility to respond to changing economic or financial situations, in our opinion.

Table 5

Voter Initiatives	
Score	
1	Not a voter initiative state; sovereign powers are strong.
2	State has some initiative activity but it has not negatively affected operations or limited flexibility over time.
3	State has an active initiative process which has affected state revenues and/or expenditures and flexibility has been diminished.
4	Initiative process is highly active and has substantially impaired operations of government.

- Legal framework for debt: Legal guidelines and the specific security features relating to GO debt are analyzed. This review would include the nature of the repayment pledge, the priority of payment for debt service, amortization features that are imbedded in constitution or statute, and legal restrictions related to debt issuance.

Table 6

Legal Framework (Debt)	
Score	
1	High degree of legal flexibility to issue debt for a range of purposes. There is a strong legal priority for payment of debt.
2	Some legal limitation on debt issuance which has not been restrictive. There is a legal priority for debt but it is not a first dollar priority.
3	Very limited legal ability to issue debt; lack of voter support or limited access to alternative debt structures. There is no established legal priority for debt.
4	Cannot issue debt, there is a lack of voter support. There is no priority of payment for debt service.

System support (federal government)

System support is an assessment of the predictability of the public finance system in a federal context, the match between revenue sources and their responsibilities, the degree of transparency and accountability, as well as the existence of a prudent fiscal policy framework. Included in this assessment is the predictability and stability of funding flows from the federal government to states (see "Methodology: Assessing The Institutional Framework For International Local And Regional Governments," published July 30, 2009).

Intergovernmental funding framework (local government)

How services and programs are provided across state and local governments and what the funding relationship has been over time are in our view important considerations because they influence revenues, spending and overall budget flexibility.

Funding of local governments and school districts is a large part of each state's budget. We review the legal requirements and historical patterns of state assistance. If a state has broad discretion in adjusting spending flows to local governments, it will have a high level of control over budgeting and cashflow. Conversely, limited legal capacity to adjust programs and spending levels or limited political willingness to do so translates into less autonomy.

Table 7

Intergovernmental Funding Framework	
Score	
1	Level of assistance to local governments is limited or highly flexible from a legal standpoint or by historic patterns; strong ability to downstream reductions.
2	Level of assistance to local governments is high; flexibility (either legal or practical) may be limited at times.
3	Level of assistance is high and is not flexible from a legal or practical standpoint; ability to downstream budget issues is restrained.
4	Very limited flexibility exists.

Financial Management

The rigor of a government's financial management practices is an important factor in Standard & Poor's analysis of a government's creditworthiness. Managerial decisions, policies, and practices have a direct effect on a government's financial position and operations, debt burden, and other key credit factors. A government's ability to implement timely and sound financial and operational decisions in response to economic and fiscal demands is in our view a key factor in assessing credit quality. Both the financial policies and the framework for budget management are the key metrics to assessing financial management and are scored individually and averaged to develop an overall score for financial management.

Financial Management Assessment

Standard & Poor's analyzes the impact of financial management policies and practices through the use the Financial management Assessment (FMA). The FMA attempts to provide a transparent assessment of a government's financial practices and to highlight aspects of management that are common to most governments in a consistent manner (see "USPF Criteria: Financial Management Assessment", June 27, 2006). Based on the current framework, a state is assigned a "strong", "good", "standard" or "vulnerable" assessment.

Budget management framework

While the FMA outlines policies in a range of areas including budget amendments, the framework for managing the budget (including legal framework as well as the policies in practice) is a factor in the high credit profile of U.S. states and we believe it is important in differentiating state credit ratings above or below the 'AA' rating level.

In assessing the budget management framework, we review whether:

- There is a formal schedule for providing revenue and spending forecast updates throughout the year;
- There are frequent (two or more times) updates during the fiscal year, especially during weak economic periods;
- Constitutional or statutory mechanisms are in place which force action on budget imbalance through the year;
- Budget adjustments are implemented in a timely manner to restore balance, generally within 30 days of budget gap being identified;
- There is a legal requirement to end the year in balance or a strong track record of doing so absent a legal requirement;
- The executive branch/budget office has broad powers to adjust appropriations;
- Legislative approval is required to restore balance but the response is timely (adjustments begin within about 30 days of the gap being identified);
- There is a well-established track record of making difficult and politically unpopular revenue and spending decisions in order to restore balance during the fiscal year;
- Gap-closing solutions are generally focused on structural budget balance or do they typically rely on non-recurring revenue or spending actions; and
- Deficits are not carried forward.

A state that meets all but one or two of the above budget management items would likely receive the highest score for its budget management framework while a state that exhibits only one or two of these characteristics would likely result in the lowest score.

Table 8

Budget Management Framework	
Score	
1	Framework is formalized, strong, and proactive; adjustments are timely, with emphasis on structural balance.
2	Framework is good but process may be less defined and adjustments may be less timely.
3	Monitoring is established but adjustments are not timely and response is uneven.
4	Framework is weak which prohibits timely adjustment; deficits carry forward into the next fiscal year.

Economy

Economic factors are an important component of our credit review. We believe that economic fundamentals play an important role in revenue generation and also influence spending and infrastructure requirements for state governments. We evaluate a range of economic indicators and evaluate the match between a state's economic profile and tax structure. Our economic review focuses on four metrics: demographic profile, economic structure including employment composition and regional economic opportunities, wealth and income indicators, and economic development and growth prospects. Each of these metrics is scored (1-4) and averaged to assess the overall economic fundamentals of a state. Where there are multiple indicators for each metric, they are also scored (1 to 4) and averaged to develop the metric score.

Demographic profile

We believe that the structure and growth characteristics of a state's population base provide critical information about revenue-generating capability as well as the costs of providing services and infrastructure. It is also a factor in revenue distribution at the federal level. We analyze historic population trends for each state relative to national and regional trends. We also focus on projections for future growth or decline. The age profile of the population base and changes in it over time are also considerations due to the high proportion of state spending tied to education and social service programs. To assess this we review the age dependency ratio calculated by the U.S. Census Bureau. The key indicators of for demographic profile are:

- Population growth trends; and
- Age distribution of population.

Table 9

Demographic Profile		
Indicators		
Score	Population growth trends	Age dependency ratio*
1	Strong population growth relative to U.S.	Relatively low dependent population (more than 5% below U.S. levels).
2	Stable population trends; steady growth over time in line with U.S.	Dependent population ratio in line with U.S. levels.
3	Demographic trends are negative at periods.	Dependent population is well above U.S. (0- +5%).
4	Growth has declined for more than a decade.	Dependent population has significant variance (more than 5%-10% from U.S.).

* From the U.S. Census.

Economic structure

The composition, output, and diversity of the employment base plays a role in the link between a state's economy and its ability to generate revenues. A state's economic structure can also influence the level of services it provides and can contribute to spending growth pressures. A review of the economic structure, growth trends, and how various indicators perform during economic cycles allows us to assess the relative stability or cyclicity of a state's economy. We also review changes in the structure of the economy over time to assess diversification trends and how this may affect future economic performance. The key indicators are:

- Employment composition by sector and how it compares to the national distribution;
- Employment, labor force, and unemployment trends;
- Retail sales growth trends and key components of retail activity; and
- Gross state product.

Table 10

Economic Structure				
Indicators				
Score	Unemployment	Employment composition/diversity of base	GSP* per capita	GSP growth
1	Rate 2%+ below U.S.	Employment mix in line with U.S.; limited concentration; performance tends to be less cyclical than U.S.	>100% of U.S.	Growth consistently above U.S.
2	Rate within 2% +/- of U.S.	Employment base exhibits some concentration that contributes to more cyclical performance than the U.S. economy as a whole.	>85% of U.S.	Growth in line with U.S.
3	Rate 2%+ above U.S.	Employment base is concentrated; performance has been cyclical and weak relative to the U.S. over the past decade	>75% of U.S.	Growth below the U.S. periodically.

Table 10

Economic Structure (cont.)				
4	Rate 5% or more above U.S.	Employment base has high level of concentration relative to U.S. distribution which has contributed to cyclical performance and weak trends over decades.	<75% of U.S.	Growth has consistently been below U.S. levels.

* GSP - gross state product.

We evaluate these indicators in the context of regional and national performance. In addition to the key indicators, we analyze the largest employers relative to current economic conditions to assess the potential for cyclical performance and how those firms might affect future growth and development. We include regional patterns of employment in the review if an individual state benefits from proximity to other labor markets.

Wealth and income indicators

We consider wealth levels of a state as part of the economic review. How income compares to national levels and how growth rates have trended over time can provide useful information about ability to tax residents. While higher wealth and income levels often translate to a high ability to pay taxes, they can also translate to a higher level of revenue volatility for states as most rely on personal income tax revenue and capital gains performance. We also evaluate income generation by sector. A higher than average (relative to U.S. distribution) contribution from certain sectors is important to consider as it relates to the ability to generate revenues and assess the potential for growth and the volatility of resources. Since state's fund a range of social service programs geared toward low income residents, we also analyze the disparity in income in a state. An income distribution that lacks extremes on either end may contribute to greater revenue stability and less spending pressure so the absolute level of income may be less telling for states from a fiscal standpoint. The key indicators are:

- Per capita personal income;
- Per capita personal income growth rates; and
- Income by sector relative to U.S. average.

Table 11

Income And Wealth			
Indicators			
Score	Per capita personal income rank	Personal income growth rates	Income by sector
1	>100% of U.S.	Positive growth relative to U.S.; less cyclical.	Income by sector in line with U.S.; limited concentration; performance tends to be less cyclical than U.S.
2	>85% of U.S.	Steady growth but may be uneven relative to U.S. and more cyclical over time.	Income base exhibits some concentration that contributes to more cyclical performance than the U.S. economy as a whole.
3	75%-85% of U.S.	Growth is evident at times but is consistently below U.S.	Income base is concentrated; performance has been cyclical and weak relative to the U.S. at times.
4	<75% of U.S.	Performance below U.S. consistently and trends have been negative over economic cycles.	Income base has high level of concentration relative to U.S. distribution which has contributed to cyclical performance and weak trends for at least a decade.

Economic development/growth prospects

In addition to historic economic trends, we consider each state's economic development initiatives and future growth prospects as they are likely to affect future revenue generating capacity. We have identified areas that we believe will drive future development. A state that displays a preponderance of attributes in a given section below will be assigned that score. We express our assessment of economic development prospects as follows:

Table 12

Economic Growth Prospects	
Score	
1	The state's climate, location, resources, employment opportunities, affordability, or tax structure are likely to support above-average demographic trends or significant private sector investment. Major urban centers are vibrant and continue to attract in-migration and investment. Key employers and higher education anchors are substantial and are catalysts to continuous investment over time. Key employment sectors are tied to areas that are expected to grow at an above-average pace. Infrastructure is in place to support growth and development.
2	The state's climate, location, resources, employment opportunities, affordability or tax structure should provide for growth in population and employment over time but growth across the state may be uneven. Some, but not all, of the urban centers are attracting investment and are major centers of job creation. Higher education anchors are not situated near major urban center or major employment centers, which could limit their effectiveness. Concentration of economic activity in certain sectors may limit overall growth in the state as these industries have weak or below-average growth prospects.
3	We expect the state to experience limited growth or possibly decline for a range of reasons including reliance on sectors that are experiencing structural decline; affordability/tax structure present a competitive disadvantage.
4	Growth prospects are not evident and there is little focus by the state on economic development initiatives.

Budgetary Performance and Flexibility

While states prepare audits each year on a generally accepted accounting principles (GAAP) basis, budget development, appropriations, budget monitoring, and reserves are all expressed on a budgetary basis, which is more closely aligned with a cash basis presentation. While budget-based financial information is a primary focus of our financial review because it is how state finances are managed on a day-to-day, we analyze the audited financial statements and variations between GAAP and budget-based financial disclosure to gain a more complete understanding of a state's financial condition. We assess six key metrics in order to evaluate budgetary performance and flexibility. These metrics are scored individually and averaged to develop an overall assessment of budgetary performance and flexibility. Where there are multiple indicators for each metric, they are also scored (1 to 4) and averaged to develop the metric score.

Reserves

State revenues are cyclical and generally respond swiftly to changing economic conditions. Looking at the history of revenue shortfalls for states, no budget reserve fund could be sized to completely address the potential for volatility in a severe recession or revenue downturn. It is our opinion, however, that states with well-funded reserves will have maximum flexibility to address shortfalls when they occur.

Formal budget reserves. The history of state budget reserves is that they have been increased in times of economic growth and depleted in times of economic decline. Over the past two decades there has been a trend by states toward greater formalization of budget reserve policies. We believe that a clearly articulated policy and steady funding of reserves is important so the reserves can be used to manage through economic cycles. In addition to the level of funding, our review includes how the size of the reserve compares to historic revenue and spending volatility, and the track record of funding the reserve, including any replenishment mechanisms.

Table 13

Budget-Based Reserves Relative To Revenue And Spending	
1	Above 8%
2	4%-8%
3	1%-4%
4	Below 1%

Note: Refers to reserve policy levels and not actual funding level as we observe that reserves are often depleted through economic cycles.

Other reserves. In addition to formal budget reserves, we review financial reserves and balances identified in funds outside of the state's main operating fund or general fund that may be available for budget purposes.

Table 14

Other Reserves	
Score	
1	More than 2%; these reserves are available without legislative approval for transfer.
2	More than 2% but transfer/use requires legislative approval.
3	Up to 2%; transfer may or may not require legislative approval.
4	No available reserves in other funds.

Note: Other reserves might be a combination of other funds outside of the state's main operating fund (non-general fund).

Liquidity

Standard & Poor's believes that a state's liquidity position is an important component of its overall credit profile. In analyzing liquidity, we review the following areas:

Liquidity management policies/practices. Nearly all states have well-developed cash monitoring capabilities, including daily monitoring of balances, and well-developed forecasting tools that enable swift reaction to imbalances. We also consider the ability to adjust disbursements and collections.

Cash flow predictability. The fluctuation in receipts and disbursements during the year and determining mismatches and how this changes from year to year.

Internal cash flow generation capacity. States often have broad discretion to access liquidity from other than general funds. We examine whether all funds are commingled--which provides a high degree of flexibility--or whether legislative or executive authority is required to shift resources from other funds to cover key operating fund requirements. We also factor into our review of liquidity the level of reserves available for cash flow purposes across state government.

External cash flow borrowing. We review borrowing cash flow purposes and how that has fluctuated over time.

Table 15

Liquidity Management And Position	
Score	
1	Strong cash monitoring capabilities; broad authority to access liquidity from pooled funds which allows for highly predictable cash management., receipts and disbursements are aligned; broad authority to adjust disbursements; little or no reliance on external borrowing.
2	Strong cash monitoring capabilities, access to pooled cash is available but may be limited to certain funds; receipts and disbursements may not be totally aligned during the fiscal year; well-defined contingencies are in place to augment internal resources; external borrowing is conducted with ease and stable over time relative to the size of the budget; ability to manage disbursements may be limited in some areas.
3	Cash monitoring is comprehensive; access to internal liquidity is not sufficient to address timing or is restricted; recurring receipts and cash disbursements are not aligned and there may be variability that leads to external borrowing requiring regular adjustments through the course of the budget year, internal estimation of cash flow needs difficult to predict.
4	Liquidity is weak and needs are volatile at times; state is meeting certain obligations only by deeply delaying payment on other obligations; ability to access pooled cash is limited; external borrowing is common and not predictable in terms of size and frequency; borrowing expanding relative to the size of the budget and may cross fiscal years.

Tax/revenue structure

Levying taxes has been a key tool for states in managing through a range of economic cycles. We believe that a state's tax structure, including the range of taxes, the ability and willingness to adjust them, and how they align with

economic activity within its borders is an important credit factor.

Diversity of revenue sources. We evaluate the range of taxes levied or revenues generated by each state and what the relative contributions are from each source. This includes a review of both the tax base and the rates to understand how they align with a state's economy and ultimately how they affect the volatility and predictability of revenues.

Table 16

Revenue Diversity Score	
Score	
1	State has contributions from at least two major sources that generally contribute more than 15%-20% each.
2	State relies on one key revenue source, generally providing more than 65% to fund operations but revenue aligns with key economic strengths of the state.
3	State relies on one key revenue source for more than 65% of revenues; key revenue source does not align closely to economic fundamentals.
4	State relies on one revenue source to fund more than 90% of operations.

Revenue adjustment history. While the legal framework for levying taxes and adjusting the tax rate and base are measured as part of the government framework, the practical ability and willingness are assessed as part of the financial flexibility and performance.

Table 17

Revenue Adjustment History	
Score	
1	Strong track record of revenue adjustments; adjustments are timely.
2	There is a demonstrated track record revenue adjustments; response is generally less timely and may lag by a fiscal year.
3	Revenue adjustments are made periodically but they are not timely and may lag structural imbalance by more than a year.
4	Revenue adjustments are not implemented.

Revenue forecasting process

State revenues tend to be volatile during economic downturns because they rely on personal income tax, sales tax, corporate income tax, and other economically sensitive sources. In our view, these sources tend to react more swiftly to economic growth and decline and are more difficult to forecast than property tax revenues. As a result, the revenue forecasting process is part of the review for each state. Specifically, we review what economic sources and projections provide the foundation for the forecast and how the forecast compares to other economic projections, as well as those of the state's peers. We also evaluate the process in place to establish the forecast: is it a non-partisan, consensus-revenue estimating process or a forecast negotiated by the executive and legislative branches through the budget adoption process. Forecasts would be analyzed to determine if they align with the current economic environment and historic performance.

Table 18

Revenue Forecasting Process	
Score	
1	There is a formal, non-partisan, consensus revenue forecasting process that reviews forecast several times during fiscal year.
2	There is a formal and detailed revenue forecast process; may be done by executive and legislative branch separately with an attempt to align the forecast in advance of budget approval based on economic considerations.
3	Revenue forecast is detailed and comprehensive but final outcome may be "negotiated" and there is some level of political influence over outcome.
4	There is no formal revenue forecasting process.

Service levels and expenditures

The range and level of services provided by each state varies significantly. We believe that expenditure composition and how this has changed over time is useful in assessing fiscal stability and flexibility.

Legal framework. The legal framework for funding various service responsibilities is important to the extent that it creates or constrains budget flexibility. Spending for Medicaid is an example of a federally mandated program that is costly and usually difficult to adjust. Certain states provide a high level of services under the program, while others provide less. These differences will affect overall budget flexibility. Other services may have a constitutional or statutory basis of funding. Funding for K-12 education is a constitutional obligation for nearly all states. A state facing a legal challenge to its funding system will often have additional spending requirements, which could diminish flexibility.

Discretionary vs. non-discretionary. When evaluating the range of services provided we analyze which are non-discretionary (mandates, statutory, constitutionally required, or contractual) and would be difficult to reduce versus those that are discretionary.

Predictability. When evaluating state spending, we also review how predictable the expenses are: do they fluctuate with the economic environment (social service programs are an example), are they regularly tied to other statutory actions (stringent prison sentencing laws translating to higher prison costs), or influenced by other policies or factors specific to a state (debt vs. pay-as-you-go policies or collective bargaining agreements). In our opinion, services that are not predictable contribute to volatility.

Table 19

Service Levels/Expenditures	
Score	
1	Expenditures are predictable and do not vary significantly from budgeted expectations; high degree of flexibility to reduce services/expenditures in most program areas. This flexibility is measured in terms of the legal ability and the political willingness.
2	Expenditures are generally predictable but may experience cyclical trends; ability to cut services and expenditures is good, but may not extend to all program areas from a practical or legal standpoint.
3	Expenditures tend to be cyclical and less predictable with variances relative to budget common in certain program areas; ability to cut services/ expenditures is adequate but many program areas are excluded from a practical or legal standpoint.
4	Expenditures are very cyclical and unpredictable and variances relative to the budget are common for many program areas; the state has exhibited a persistent reluctance or inability to reduce expenditures and service levels.

Structural budget performance

We consider a state's budget to be structurally balanced if current revenues match current operating expenditures. We believe that having a structurally balanced budget is an important measure of fiscal performance and we review a state's performance in achieving this through economic cycles. We recognize that structural balance is difficult to maintain during economic downturns when revenue performance is weak, but we believe it is also difficult during periods of strong economic growth when excess revenue can lead to expansion of programs and services. Most state governments that do multi-year financial planning will almost always show out-year gaps regardless of the economic climate as scarce resources are balanced against virtually unlimited spending needs. Periods of imbalance are common for states but we believe that a track record of aligning recurring revenues and expenditures over time is an important element of fiscal performance.

Table 20

Structural Budget Performance	
Score	
1	Surpluses are regularly recorded in periods of positive economic growth; surpluses are used to fund reserves and other non recurring items. In periods of economic decline, focus on addressing budget imbalance includes structural solutions (generally more than 50%) rather than all one time measures.
2	Balanced operating results are typically achieved during periods of positive economic growth; commitment to reserves and non-recurring program areas is not formalized and may not be consistent; in periods of decline, focus on budget balance may be more reliant on non-recurring measures (more than 50%) to restore balance.
3	Balanced operating results may be achieved in positive economic periods but there is limited commitment to reserves and non-recurring program areas (surpluses largely fund higher recurring spending). In periods of economic and revenue decline, focus on budget balance may be more reliant on non-recurring measures (more than 75%) to restore balance.
4	There is limited focus on structural budget balance; deficits are regularly carried forward into future fiscal years and reserves are not funded in periods of positive economic growth.

Debt And Liability Profile

Debt and liability analysis remains a significant focus of Standard & Poor's overall credit evaluation of states. In particular, we are interested in debt service expense and how it might compete with funding of other long-term liabilities and operating costs for future tax streams and revenue sources. In general, serial bond issues are the most common form of financing which allows for predictable servicing costs. We evaluate four key metrics and for each metric we score key indicators. Each of these indicators is scored separately and then averaged to develop the overall score for the metric.

Our review of a state's debt profile includes an emphasis on debt management which is outlined in the FMA. States with high ratings tend to have formal and well-defined debt management policies, which typically include guidelines for issuing debt, affordability parameters, and policies for variable-rate debt and use of derivatives.

Debt structure

Standard & Poor's debt ratio calculations for states aggregate all tax-supported obligations, including GO bonds, appropriation obligations, and special-tax bonds such as sales, personal income, and gas tax bonds. In general, our tax-supported debt calculation will not include debt that is issued for true enterprise or self-sustaining purposes, such as toll revenue bonds if revenues are sufficient to cover debt service costs (see "USPF Criteria: Debt Statement Analysis," Aug. 22, 2006). Once we have determined a net direct tax supported debt figure, we calculate various ratios.

We do not include grant anticipation revenue (GARVEE) bonds in state debt calculations if they are payable solely from dedicated federal revenues. We will also exclude bonds secured by tobacco settlement revenues from state debt calculations if they conform to our stress scenarios for rating such debt and are payable exclusively from settlement revenues. There have not been a wide range of securitizations of assets or future revenues. We would evaluate each on a case-by-case basis to determine if it would be included as tax supported debt or a contingent liability. We exclude contingent obligations or moral obligation debt from the tax-supported debt calculation if there has been no state support required. As the use of public-private partnerships expands, there will be careful evaluation of the nature of a state's obligation under various long-term agreements in determining whether the obligation is considered part of a state's tax-supported debt burden or would be considered a contingent liability.

Key debt ratios

Standard & Poor's examines a variety of ratios to measure debt structure, including:

Debt per capita. This ratio establishes comparative ranges based on the population that is served and pays for the debt.

Table 21

Tax-Supported Debt Per Capita	
Low (1)	Below \$500
Moderate (2)	\$500-\$2,000
Moderately high (3)	\$2,000-\$3,500
High (4)	Above \$3,500

Debt as a percentage of personal income. We consider this ratio to be relevant because we believe the capacity to pay is a critical factor in debt analysis.

Table 22

Tax-Supported Debt/Personal Income	
Low (1)	Below 2%
Moderate (2)	2%-4%
Moderately high (3)	4%-7%
High (4)	Above 7%

Debt service as a percentage of expenditures. We believe this ratio is an important indicator, and one that states have emphasized more than other measures to assess affordability. Debt service to operating revenue and debt service to operating expenditures usually track closely, although distortions in the first ratio can occur if nonrecurring revenues are factored into state revenue bases.

Table 23

Tax-Supported Debt Service As A % of General Government Spending	
Low (1)	Below 2%
Moderate (2)	2%-6%
Moderately high (3)	6%-10%
High (4)	Above 10%

Debt to state gross domestic product (GDP). We have not used this ratio widely in the past but anticipate reporting on it in the future. We use this measure widely for sovereign and non-U.S. public finance and we believe it should allow enhanced comparability for government ratings.

Table 24

Tax-Supported Debt As A % Of State GDP	
Low (1)	Below 2%
Moderate (2)	2%-4%
Moderately high (3)	4%-7%
High (4)	Above 7%

Debt amortization. Serial amortization is a common feature for government debt issuance in the U.S. Debt service relative to the size of the budget is in our view an important affordability measure but needs to be evaluated in the context of the overall debt amortization schedule. A low debt service carrying charge ratio could simply be a

function of a very slow 30-year amortization, which would be viewed differently from a 15-year schedule. The benchmark of 50% of principal repaid in 10 years is considered average. This indicator assumes serial debt amortization where rapid amortization can allow new debt to be issued without affecting debt burden measures.

Table 25

Debt Amortization (10 year)	
Very rapid (1)	80%-100%
Rapid (2)	60%-80%
Average (3)	40%-60%
Slow (4)	Less than 40%

Derivative and variable rate debt. As part of the overall debt profile we also review the use of derivatives, variable rate debt, bank bond exposure, liquidity calls, and acceleration provisions relating to variable rate debt. With respect to derivatives, we analyze the objectives in entering into these contracts (e.g., hedging, cost reduction), the type of risk they are designed to mitigate, the extent of their use, management's tolerance for risk, and the controls in place to monitor these instruments. We also evaluate the risk associated with the swap portfolio (see "USPF Criteria: Municipal Swaps," June 27, 2007, and "USPF Criteria: Debt Derivative Profile Scores," March 27, 2006) and factor it into the overall analysis of debt structure. We also review policies relating to variable rate debt issuance and how the overall debt program is managed. If we assess a high level of risk (for example a DDP score of 4) related to any of these areas, it could potentially become a "notching down" factor in assessing the rating.

Future debt

Although a state's current debt burden is important, we believe it should be viewed in the context of future needs. This would include a review of the processes for authorizing debt, the types of capital and infrastructure a state is responsible for, and the timeframe for issuance. The legal authorization and practice of issuing debt for operating purposes and how this is amortized is also a factor in our review of a debt profile. We would also consider other long-term funding requirements and contingent liabilities in this measure including payments associated with litigation or other long-term liabilities that could alter the future debt or fixed cost burden.

Table 26

Future Debt	
Score	
1	Limited future debt planned; will generally be issuing what is amortized; issuance will adhere to affordability guidelines and debt indicators are not expected to move out of the current range.
2	Debt issuance is expected to exceed amortization; issuance may not follow an affordability guidelines; issuance could slightly elevate ratios but will remain in the current range.
3	Significant additional debt is planned; indicators will likely elevate above current range; investment is for capital, infrastructure or strategic economic investment.
4	Significant additional debt is planned, ratios will elevate above current ranges; debt issuance is centered on funding operations rather than capital.

Many non-debt liabilities have created funding challenges for states. While these liabilities or obligations do not necessarily constitute debt, they represent spending requirements that states are obligated to fund or raise revenue for and which, politically or legally, they may have limited ability to scale back. Included in this category are unfunded pension liabilities, school building aid programs, other post employment benefit liabilities (OPEBs), natural disaster entities, unemployment compensation, and workers compensation funds. Many states have had to convert some of these soft liabilities to actual bond obligations or have had to devote a greater share of total budget resources to them.

Pension liabilities

We annually review state pension liabilities and trends related to funding progress. This analysis includes changes in assets and liabilities, funded ratios, and unfunded actuarial accrued liabilities. Pension asset valuations can change, as can the actuarial liabilities. A state's commitment to funding the actuarial required contribution and how substantive and volatile these contributions are relative to the total budget are key credit considerations. While we measure pension liabilities along with debt indicators relative to population and income, these liabilities are not included in the debt ratios that we report on due to variation in how the liabilities are calculated. Specifically, there are a broad range of actuarial methods and assumptions allowed by the Governmental Accounting Standards Board (GASB) for governments in the U.S. and interest earnings assumptions differ by state.

Table 27

Pension Funded Ratio (3-Year Average)	
Strong (1)	90% or above
Above average (2)	80%-90%
Below average (3)	60%-80%
Weak (4)	60% or Below

Table 28

Pension Funding Levels	
Strong (1)	Consistently funds actuarial required contributions (ARC).
Above average (2)	Funds ARC in most years but occasionally contributes less.
Below average (3)	Has not funded ARC for 3 years.
Weak (4)	Has not funded ARC for more than 3 years.

Other post employment benefits

All states are now reporting OPEB liabilities pursuant to GASB Statement 45. Currently, OPEB expenditures are funded generally on a pay-as-you-go basis and GASB Statement 45 does not require funding of the liability. Under the statement, liabilities attributable to OPEB and the annual required contribution for employers are actuarially determined and reported. From a credit standpoint, OPEB liabilities and funding strategies will be evaluated similarly with the evaluation of pension obligations. This analysis will include a review of the historical and projected pay-go costs for OPEB and how that compares to the actuarial required contributions from a budgetary standpoint. The legal and practical flexibility that a state has to adjust the liabilities and the overall strategy to manage the cost of these benefits will affect future contribution rates and budgetary requirements. Similar to pensions, the annual fixed costs and potential for growth will be evaluated as part of an overall review of a state's debt and liability profile, but will not appear on the debt statement.

Table 29

OPEB Risk Assessment	
Low (1)	Limited benefits provided or benefit consists of allowing some participation in the health plan (cost paid entirely by the retiree, implicit subsidy recorded), high level of discretion to change benefits, pay-go costs are not significantly different from the actuarial required contribution.
Moderate (2)	Moderate/average liability relative to state peers, proactive management of the liability, some flexibility to adjust benefit levels, contributions in excess of the annual pay-go amount have been made in order to accumulate assets to address the liability.
Elevated (3)	Above-average liability relative to state peers, options to address the liability are being considered but plans are not well-developed, there may be some flexibility to adjust benefits but changes have been limited.
High (4)	High liability relative to state peers, high level of benefits that are viewed as inflexible based on statute/constitution/contract terms, a lack of management action to address the liability which will lead to accelerating pay-go contributions.

Related Criteria And Research

- Principles Of Corporate And Government Ratings, June 26, 2007.
- USPF Criteria: GO Debt, Oct. 12, 2006
- USPF Criteria: Financial Management Assessment, June 27, 2006
- USPF Criteria: Debt Statement Analysis, Aug. 22, 2006
- USPF Report Card: 2009 State Debt Review: Significant Challenges Lie Ahead, Dec. 16, 2009
- Market Declines Will Shake Up U.S. State Pension Funding Stability, Feb. 26, 2009
- U.S. States' OPEB Liabilities And Funding Strategies Vary Widely, June 3, 2009

Copyright (c) 2010 by Standard & Poor's Financial Services LLC (S&P), a subsidiary of The McGraw-Hill Companies, Inc. All rights reserved.

No content (including ratings, credit-related analyses and data, model, software or other application or output therefrom) or any part thereof (Content) may be modified, reverse engineered, reproduced or distributed in any form by any means, or stored in a database or retrieval system, without the prior written permission of S&P. The Content shall not be used for any unlawful or unauthorized purposes. S&P, its affiliates, and any third-party providers, as well as their directors, officers, shareholders, employees or agents (collectively S&P Parties) do not guarantee the accuracy, completeness, timeliness or availability of the Content. S&P Parties are not responsible for any errors or omissions, regardless of the cause, for the results obtained from the use of the Content, or for the security or maintenance of any data input by the user. The Content is provided on an "as is" basis. S&P PARTIES DISCLAIM ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, FREEDOM FROM BUGS, SOFTWARE ERRORS OR DEFECTS, THAT THE CONTENT'S FUNCTIONING WILL BE UNINTERRUPTED OR THAT THE CONTENT WILL OPERATE WITH ANY SOFTWARE OR HARDWARE CONFIGURATION. In no event shall S&P Parties be liable to any party for any direct, indirect, incidental, exemplary, compensatory, punitive, special or consequential damages, costs, expenses, legal fees, or losses (including, without limitation, lost income or lost profits and opportunity costs) in connection with any use of the Content even if advised of the possibility of such damages.

Credit-related analyses, including ratings, and statements in the Content are statements of opinion as of the date they are expressed and not statements of fact or recommendations to purchase, hold, or sell any securities or to make any investment decisions. S&P assumes no obligation to update the Content following publication in any form or format. The Content should not be relied on and is not a substitute for the skill, judgment and experience of the user, its management, employees, advisors and/or clients when making investment and other business decisions. S&P's opinions and analyses do not address the suitability of any security. S&P does not act as a fiduciary or an investment advisor. While S&P has obtained information from sources it believes to be reliable, S&P does not perform an audit and undertakes no duty of due diligence or independent verification of any information it receives.

S&P keeps certain activities of its business units separate from each other in order to preserve the independence and objectivity of their respective activities. As a result, certain business units of S&P may have information that is not available to other S&P business units. S&P has established policies and procedures to maintain the confidentiality of certain non-public information received in connection with each analytical process.

S&P may receive compensation for its ratings and certain credit-related analyses, normally from issuers or underwriters of securities or from obligors. S&P reserves the right to disseminate its opinions and analyses. S&P's public ratings and analyses are made available on its Web sites, www.standardandpoors.com (free of charge), and www.ratingsdirect.com and www.globalcreditportal.com (subscription), and may be distributed through other means, including via S&P publications and third-party redistributors. Additional information about our ratings fees is available at www.standardandpoors.com/usratingsfees.

has contributed to significant employment growth in the western half of the state, and state officials report that growth has been occurring around the rest of North Dakota as well.

The state's financial position is also very strong in our view. Fiscal 2012 ended with a generally accepted accounting principles general fund balance of \$2.91 billion, a \$1.5 billion increase from the previous year. Most of the increase was due to revenues exceeding budget projections, although the general fund also received a \$670 million transfer from the permanent oil tax trust fund when that fund was closed out. The unassigned portion of the fund balance was \$1.41 billion (96% of fiscal 2012 general fund expenditures) and an additional \$996.7 million was committed. Fiscal 2013 revenues continue to be strong, and officials project an ending general fund balance of \$1.4 billion, in addition to multiple other reserves such as \$700 million in the strategic investment and improvements fund and \$650 million in the budget stabilization fund, the maximum level under current law.

North Dakota's revenue collections have been strong and collections for the current biennium have significantly exceeded the original forecasts from April 2011. While general fund spending from direct oil taxes is limited to \$300 million per biennium, the strong economic activity driven by oil extraction has led to strong collections for sales taxes and personal and corporate income taxes. Through January 2013, general fund revenues for the 2011-2013 biennium were \$1.20 billion, or 41.5%, above the April 2011 forecast.

The administration and legislature recently updated the 2011-2013 biennial forecast, most recently with a legislative forecast in February 2013. Sales taxes are North Dakota's largest general fund revenue source, at 50% of the 2011-2013 biennial forecast revenue, followed by individual income taxes (20%), corporate income taxes (9%), and oil and gas production and extraction (7%). Officials project that the current federal sequestration cuts will have minimal impact on the state economy and state finances.

In our view, North Dakota's conservative practices and moderate infrastructure needs have kept its debt levels low. With the state's limited additional debt on the horizon, we believe annual debt service should remain very low as a percent of the operating budget; the carrying charge was only about 1% of expenditures in fiscal 2011.

Based on the analytical factors we evaluate for states, on a scale of '1.0' (strongest) to '4.0' (weakest), we have assigned a composite score of '1.5'.

Outlook

The positive outlook reflects what we view as North Dakota's strong government framework and management, strong budgetary performance, and enhanced reserves. If the state continues to improve pension funding levels and brings them more in line with 'AAA' rated peers, we could raise the rating to 'AAA'. Alternatively, if those actions do not improve pension funding to that level, we could revise the outlook on North Dakota back to stable. Downside risks for the rating include the potential for significant reductions in federal funding that currently flows to the state. Standard & Poor's will continue to monitor the federal consolidation efforts and the impact these will have on the state.

Of the 13 states which have "AAA" ratings from S&P, all of them have defined benefit plans and all but 2 have defined contribution plans. The following table summarizes each state and which type or types of pensions they have.

State	Defined Benefit	Defined Contribution
Alaska	Yes	Yes
Delaware	Yes	No
Florida	Yes	Yes
Georgia	Yes	Yes
Indiana	Yes	Yes
Iowa	Yes	Yes
Maryland	Yes	Yes
Missouri	Yes	No
Nebraska	Yes	Yes
North Carolina	Yes	Yes
Utah	Yes	Yes
Virginia	Yes	Yes
Wyoming	Yes	Yes

State General Obligation Ratings and Outlooks

State	Moody's		S&P		Fitch	
Alabama	Aa1	Stable	AA	Stable	AA+	Stable
Alaska	Aaa	Stable	AAA	Stable	AAA	Stable
Arizona	(Aa3)	Stable	(AA-)	Stable	*	N/A
Arkansas	Aa1	Stable	AA	Stable	*	N/A
California	A1	Stable	A	Stable	A-	Positive
Colorado	(Aa1)	Stable	(AA)	Stable	*	N/A
Connecticut	Aa3	Stable	AA	Stable	AA	Stable
Delaware	Aaa	Stable	AAA	Stable	AAA	Stable
DC	Aa2	Negative	A+	Stable	AA-	Stable
Florida	Aa1	Stable	AAA	Stable	AAA	Negative
Georgia	Aaa	Stable	AAA	Stable	AAA	Stable
Hawaii	Aa2	Stable	AA	Stable	AA	Stable
Idaho	(Aa1)	Stable	(AA+)	Stable	AA***	Stable
Illinois	A2	Negative	A-	Negative	A	Negative
Indiana	(Aaa)	Stable	(AAA)	Stable	(AAA)	Stable
Iowa	(Aaa)	Stable	(AAA)	Stable	(AAA)	Stable
Kansas	(Aa1)	Negative	(AA+)	Stable	AA***	Stable
Kentucky	(Aa2)	Negative	(AA-)	Stable	A+***	Stable
Louisiana	Aa2	Stable	AA	Stable	AA	Stable
Maine	Aa2	Negative	AA	Stable	AA	Stable
Maryland	Aaa	Negative	AAA	Stable	AAA	Stable
Massachusetts	Aa1	Stable	AA+	Stable	AA+	Stable
Michigan	Aa2	Stable	AA-	Stable	AA-	Positive
Minnesota	Aa1	Negative	AA+	Stable	AA+	Stable
Mississippi	Aa2	Stable	AA	Stable	AA+	Stable
Missouri	Aaa	Negative	AAA	Stable	AAA	Stable

State	Moody's		S&P		Fitch	
Montana	Aa1	Stable	AA	Stable	AA+	Stable
Nebraska	*	Stable	(AAA)	Stable	*	N/A
Nevada	Aa2	Stable	AA	Stable	AA+	Stable
New Hampshire	Aa1	Stable	AA	Stable	AA+	Stable
New Jersey	Aa3	Stable	AA-	Negative	AA-	Stable
New Mexico	Aaa	Negative	AA+	Stable	*	N/A
New York	Aa2	Stable	AA	Positive	AA	Positive
North Carolina	Aaa	Stable	AAA	Stable	AAA	Stable
North Dakota	(Aa1)	Stable	(AA+)	Positive	*	N/A
Ohio	Aa1	Stable	AA+	Stable	AA+	Stable
Oklahoma	Aa2	Stable	AA+	Stable	AA+	Stable
Oregon	Aa1	Stable	AA+	Stable	AA+	Stable
Pennsylvania	Aa2	Stable	AA	Negative	AA+	Negative
Puerto Rico	Baa3	Negative	BBB	Negative	BBB+	Negative
Rhode Island	Aa2	Negative	AA	Stable	AA	Stable
South Carolina	Aaa	Stable	AA+	Stable	AAA	Stable
South Dakota	*	Stable	(AA+)	Stable	AA***	Stable
Tennessee	Aaa	Stable	AA+	Positive	AAA	Stable
Texas	Aaa	Stable	AA+	Stable	AAA	Stable
Utah	Aaa	Stable	AAA	Stable	AAA	Stable
Vermont	Aaa	Stable	AA+	Positive	AAA	Stable
Virginia	Aaa	Negative	AAA	Stable	AAA	Stable
Washington	Aa1	Negative	AA+	Stable	AA+	Negative
West Virginia	Aa1	Stable	AA	Stable	AA+	Stable
Wisconsin	Aa2	Stable	AA	Stable	AA	Stable
Wyoming	*	N/A	(AAA)	Stable	*	N/A

Ratings in parentheses are issuer credit ratings or implied General Obligation ratings.

Note: Shaded box indicates recent rating action.

* No general obligation rating.

*** Lease revenue and/or Certificate of Participation ("COP") rating.

Sources: Fitch Ratings, Moody's Investors Service, Standard & Poor's Ratings Services; As of March 4, 2013.



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

That the Senate recede from its amendments as printed on pages 1302-1309 of the House Journal and pages 1185-1192 of the Senate Journal and that Engrossed House Bill No. 1452 be amended as follows:

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, remove the second comma

Page 1, line 2, replace "54-52.6-15" with "54-52.6-09"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and to repeal section 54-52.6-03 of the"

Page 1, remove line 4

Page 1, line 5, replace "public employees retirement system" with "to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once

the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the

associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1."

Page 1, after line 21, insert:

"SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also 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. 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 5. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.
2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment

must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.
4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer

shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 6. 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.

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, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 7. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. The assessment must be

deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 8. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 9. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in

addition, an amount equal to the required peace officer's or correctional officer's assessment."

Page 2, line 12, replace "is hired after July 30, 2013" with "elects to participate in the retirement plan under this chapter"

Page 3, after line 2, insert:

"SECTION 11. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, remove lines 27 through 31

Page 8, replace lines 1 through 8 with:

"SECTION 13. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.
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 14. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits programs committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 15. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 16. EFFECTIVE DATE. Sections 3, 10, and 12 of this Act become effective on October 1, 2013.

SECTION 17. EXPIRATION DATE - SUSPENSION. Sections 3, 10, and 12 of this Act are effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03, as it existed on September 30, 2013, becomes effective on August 1, 2017."

Renumber accordingly

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1452 H-24-13

Introduced by

Representatives Kasper, Belter, Carlson, Dosch, Grande, Keiser, Klein, Ruby, Streyle

Senators Grindberg, Hogue, Klein

1 A BILL for an Act to amend and reenact sections 39-03.1-09 and 39-03.1-10, subsection 4 of
2 section 54-52-01 and, sections 54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2,
3 54-52-06.3, and 54-52.6-01, subsection 6 of section 54-52.6-02, and sections 54-52.6-02, and
4 54-52.6-154-52.6-09 of the North Dakota Century Code, relating to increased employer and
5 employee contributions under the highway patrolmen's retirement plan and public employees
6 retirement system and eligibility to participate in the defined contribution retirement plan; and to
7 repeal section 54-52.6-03 of the North Dakota Century Code, relating to calculation of
8 accumulated fund balances under the public employees retirement system to provide for a
9 legislative management study; to provide an appropriation; to provide an effective date; and to
10 provide an expiration date.

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

12 **SECTION 1. AMENDMENT.** Section 39-03.1-09 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **39-03.1-09. Payments by contributors - Employer payment of employee contribution.**

- 15 1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund
16 ten and thirty-hundredths percent of the member's monthly salary, which sum must be
17 deducted from the member's salary and credited to the member's account in the fund.
18 Member contributions increase by one percent of the member's monthly salary
19 beginning with the monthly reporting period of January 2012, ~~and with an additional~~
20 increase of one percent, beginning with the monthly reporting period of January 2013,
21 and with an additional increase of one percent, beginning with the monthly reporting
22 period of January 2014.
- 23 2. The state of North Dakota, at its option, may pay the member contributions required by
24 subsection 1 for all compensation earned after June 30, 1983, and may pay the

- 1 member contributions required to purchase service credit on a pretax basis pursuant
2 to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in
3 lieu of contributions by the member. A member may not receive the contributed
4 amounts directly once the employer has elected to pay the member contributions. If
5 the state decides not to pay the contributions, the amount that would have been paid
6 will continue to be deducted from compensation. If contributions are paid by the state,
7 they must be treated as employer contributions in determining tax treatment under this
8 code and the federal Internal Revenue Code. If contributions are paid by the state,
9 they must not be included as gross income of the member in determining tax
10 treatment under this code and the Internal Revenue Code until they are distributed or
11 made available. The state shall pay these member contributions from the same source
12 of funds used in paying compensation to the members. The state shall pay these
13 contributions by effecting an equal cash reduction in the gross salary of the employee
14 or by an offset against future salary increases or by a combination of a reduction in
15 gross salary and offset against future salary increases. If member contributions are
16 paid by the state, they must be treated for the purposes of this chapter in the same
17 manner and to the same extent as member contributions made prior to the date the
18 contributions were assumed by the state. The option given employers by this
19 subsection must be exercised in accordance with rules adopted by the board.
- 20 3. For compensation earned after August 1, 2009, all employee contributions required
21 under subsection 1, and not otherwise paid under subsection 2, must be paid by the
22 state in lieu of contributions by the member. All contributions paid by the state under
23 this subsection must be treated as employer contributions in determining tax treatment
24 under this code and the federal Internal Revenue Code. Contributions paid by the
25 state under this subsection may not be included as gross income of the member in
26 determining tax treatment under this code and the Internal Revenue Code until the
27 contributions are distributed or made available. Contributions paid by the state in
28 accordance with this subsection must be treated for the purposes of this chapter in the
29 same manner and to the same extent as member contributions made before the date
30 the contributions were assumed by the state. The state shall pay these member
31 contributions from the same source of funds used in paying compensation to the

members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1.

SECTION 3. AMENDMENT. Subsection 4 of section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. Eligible employee does not include ~~nondclassified~~ state employees who elect to become members of the retirement plan established under chapter 54-52.6 ~~but does include employees of the judicial branch~~

1 ~~and employees of the board of higher education and state institutions under the~~
2 ~~jurisdiction of the board.~~

3 **SECTION 4. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-52-02.9. Participation by temporary employees.**

6 A temporary employee may elect, within one hundred eighty days of beginning employment,
7 to participate in the public employees retirement system and receive credit for service after
8 enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight
9 and twelve-hundredths percent times the temporary employee's present monthly salary. The
10 amount required to be paid by a temporary employee increases by two percent times the
11 temporary employee's present monthly salary beginning with the monthly reporting period of
12 January 2012, and with an additional two percent increase, beginning with the reporting period
13 of January 2013, and with an additional increase of two percent, beginning with the monthly
14 reporting period of January 2014. The temporary employee shall also pay the required monthly
15 contribution to the retiree health benefit fund established under section 54-52.1-03.2. This
16 contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An
17 employer may not pay the temporary employee's contributions. A temporary employee may
18 continue to participate as a temporary employee in the public employees retirement system until
19 termination of employment or reclassification of the temporary employee as a permanent
20 employee. A temporary employee may not purchase any additional credit, including additional
21 credit under section 54-52-17.4 or past service under section 54-52-02.6.

22 **SECTION 5. AMENDMENT.** Section 54-52-05 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **54-52-05. Membership and assessments - Employer payment of employee**
25 **contributions.**

- 26 1. Every eligible governmental unit employee concurring in the plan must so state in
27 writing and all future eligible employees are participating members. An employee who
28 was not enrolled in the retirement system when eligible to participate must be enrolled
29 immediately upon notice of the employee's eligibility, unless the employee waives in
30 writing the employee's right to participate for the previous time of eligibility, to avoid
31 contributing to the fund for past service. An employee who is eligible for normal

1 retirement who accepts a retirement benefit under this chapter and who subsequently
2 becomes employed with a participating employer other than the employer with which
3 the employee was employed at the time the employee retired under this chapter may,
4 before reenrolling in the retirement plan, elect to permanently waive future
5 participation in the retirement plan and the retiree health program and maintain that
6 employee's retirement status. An employee making this election is not required to
7 make any future employee contributions to the public employees retirement system
8 nor is the employee's employer required to make any further contributions on behalf of
9 that employee.

10 2. Each member must be assessed and required to pay monthly four percent of the
11 monthly salary or wage paid to the member, and such assessment must be deducted
12 and retained out of such salary in equal monthly installments commencing with the
13 first month of employment. Member contributions increase by one percent of the
14 monthly salary or wage paid to the member beginning with the monthly reporting
15 period of January 2012, and with an additional increase of one percent, beginning with
16 the monthly reporting period of January 2013, and with an additional increase of one
17 percent, beginning with the monthly reporting period of January 2014.

18 3. Each employer, at its option, may pay all or a portion of the employee contributions
19 required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and
20 54-52-06.4 or the employee contributions required to purchase service credit on a
21 pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not
22 receive the contributed amounts directly once the employer has elected to pay the
23 employee contributions. The amount paid must be paid by the employer in lieu of
24 contributions by the employee. If the state determines not to pay the contributions, the
25 amount that 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. The
31 employer shall pay these employee contributions from the same source of funds used

in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 6. 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.

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

1 contributions increase by one percent of the monthly salary or wage of a participating member
2 beginning with the monthly reporting period of January 2012, and with an additional increase of
3 one percent, beginning with the reporting period of January 2013, and with an additional
4 increase of one percent, beginning with the monthly reporting period of January 2014. For those
5 members who elect to exercise their rights under section 54-52-17.14, the employing
6 governmental unit, or in the case of a member not presently under covered employment the
7 most recent employing governmental unit, shall pay the associated employer contribution. If the
8 employee's contribution is paid by the governmental unit under subsection 3 of section
9 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required
10 employee's contribution. Each governmental unit shall pay the contribution monthly, or in the
11 case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund
12 from its funds appropriated for payroll and salary or any other funds available for these
13 purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an
14 election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty
15 dollars and, as interest, one percent of the amount due for each month of delay or fraction
16 thereof after the payment became due. In lieu of assessing a civil penalty or one percent per
17 month, or both, interest at the actuarial rate of return may be assessed for each month the
18 contributions are delinquent. If contributions are paid within ninety days of the date they became
19 due, penalty and interest to be paid on delinquent contributions may be waived. An employer is
20 required to submit contributions for any past eligible employee who was employed after July 1,
21 1977, for which contributions were not made if the employee would have been eligible to
22 become vested had the employee participated and if the employee elects to join the public
23 employees retirement system. Employer contributions may not be assessed for eligible service
24 that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall
25 report to each session of the legislative assembly the contributions necessary, as determined by
26 the actuarial study, to maintain the fund's actuarial soundness.

27 **SECTION 7. AMENDMENT.** Section 54-52-06.1 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **54-52-06.1. Contribution by supreme and district court judges - Employer**
2 **contribution.**

3 Each judge of the supreme or district court who is a member of the public employees
4 retirement system must be assessed and required to pay monthly five percent of the judge's
5 monthly salary. Member contributions increase by one percent of the judge's monthly salary
6 beginning with the monthly reporting period of January 2012, and with an additional increase of
7 one percent, beginning with the reporting period of January 2013, and with an additional
8 increase of one percent, beginning with the monthly reporting period of January 2014. The
9 assessment must be deducted and retained out of the judge's salary in equal monthly
10 installments. The state shall contribute an amount equal to fourteen and fifty-two
11 one-hundredths percent of the monthly salary of a supreme or district court judge who is a
12 participating member of the system, which matching contribution must be paid from its funds
13 appropriated for salary, or from any other funds available for such purposes. State contributions
14 increase by one percent of the monthly salary of a supreme or district court judge who is a
15 participating member of the system beginning with the monthly reporting period of
16 January 2012, and with an additional increase of one percent, beginning with the monthly
17 reporting period of January 2013, and with an additional increase of one percent, beginning with
18 the monthly reporting period of January 2014. If the judge's contribution is paid by the state
19 under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal
20 to the required judge's contribution.

21 **SECTION 8. AMENDMENT.** Section 54-52-06.2 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **54-52-06.2. Contribution by national guard security officers or firefighters - Employer**
24 **contribution.**

25 Each national guard security officer or firefighter who is a member of the public employees
26 retirement system is assessed and shall pay monthly four percent of the employee's monthly
27 salary. Member contributions increase by one-half of one percent of the member's monthly
28 salary beginning with the monthly reporting period of January 2014. The assessment must be
29 deducted and retained out of the employee's salary in equal monthly installments. The national
30 guard security officer's or firefighter's employer shall contribute an amount determined by the
31 board to be actuarially required to support the level of benefits specified in section 54-52-17.

1 The employer's contribution must be paid from funds appropriated for salary or from any other
2 funds available for such purposes. If the security officer's or firefighter's assessment is paid by
3 the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition,
4 an amount equal to the required national guard security officer's or firefighter's assessment.

5 **SECTION 9. AMENDMENT.** Section 54-52-06.3 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-52-06.3. Contribution by peace officers and correctional officers employed by**
8 **political subdivisions - Employer contribution.**

9 Each peace officer or correctional officer employed by a political subdivision that enters into
10 an agreement with the retirement board on behalf of its peace officers and correctional officers
11 separately from its other employees and who is a member of the public employees retirement
12 system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace
13 officer or correctional officer contributions increase by one-half of one percent of the member's
14 monthly salary beginning with the monthly reporting period of January 2012, and with an
15 additional increase of one-half of one percent, beginning with the monthly reporting period of
16 January 2013, and with an additional increase of one-half of one percent, beginning with the
17 monthly reporting period of January 2014. The assessment must be deducted and retained out
18 of the employee's salary in equal monthly installments. The peace officer's or correctional
19 officer's employer shall contribute an amount determined by the board to be actuarially required
20 to support the level of benefits specified in section 54-52-17. 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 10. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **54-52.6-01. Definition of terms.**

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

- 28 1. "Board" means the public employees retirement system board.
- 29 2. "Deferred member" means a person who elected to receive deferred vested retirement
30 benefits under chapter 54-52.

- 1 3. ~~"Eligible employee" means a permanent state employee, except an employee of the~~
2 ~~judicial branch or an employee of the board of higher education and state institutions~~
3 ~~under the jurisdiction of the board, who is eighteen years or more of age and who is in~~
4 ~~a position not classified by North Dakota human resource management services. If a~~
5 ~~participating member loses permanent employee status and becomes a temporary~~
6 ~~employee, the member may still participate in the defined contribution retirement plan~~
7 ~~who is hired after July 30, 2013 elects to participate in the retirement plan under this~~
8 chapter.
- 9 4. "Employee" means any person employed by the state, whose compensation is paid
10 out of state funds, or funds controlled or administered by the state or paid by the
11 federal government through any of its executive or administrative officials.
- 12 5. "Employer" means the state of North Dakota.
- 13 6. "Participating member" means an eligible employee who elects to participate in the
14 defined contribution retirement plan established under this chapter.
- 15 7. "Permanent employee" means a state employee whose services are not limited in
16 duration and who is filling an approved and regularly funded position and is employed
17 twenty hours or more per week and at least five months each year.
- 18 8. "Wages" and "salaries" means earnings in eligible employment under this chapter
19 reported as salary on a federal income tax withholding statement plus any salary
20 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or
21 457. "Salary" does not include fringe benefits such as payments for unused sick leave,
22 personal leave, vacation leave paid in a lump sum, overtime, housing allowances,
23 transportation expenses, early retirement, incentive pay, severance pay, medical
24 insurance, workforce safety and insurance benefits, disability insurance premiums or
25 benefits, or salary received by a member in lieu of previously employer-provided fringe
26 benefits under an agreement between an employee and a participating employer.
27 Bonuses may be considered as salary under this section if reported and annualized
28 pursuant to rules adopted by the board.

29 **SECTION 11. AMENDMENT.** Subsection 6 of section 54-52.6-02 of the North Dakota
30 Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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.

SECTION 12. AMENDMENT. Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election.

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~~

1 ~~does not make a written election or who does not file the election during the period~~
2 ~~specified in this section continues to be a member of the public employees retirement~~
3 ~~system. An eligible employee who makes and files a written election under this section~~
4 ~~ceases to be a member of the public employees retirement system effective twelve~~
5 ~~midnight December 31, 2001; becomes a participating member in the defined~~
6 ~~contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002;~~
7 ~~and waives all of that person's rights to a pension, annuity, retirement allowance,~~
8 ~~insurance benefit, or any other benefit under the public employees retirement system~~
9 ~~effective December 31, 2001. This section does not affect a person's right to health~~
10 ~~benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is~~
11 ~~first employed and entered upon the payroll of that person's employer after~~
12 ~~September 30, 2001, may make an election to participate in the defined contribution~~
13 ~~retirement plan established under this chapter at any time during the first six months~~
14 ~~after the date of employment. If the board, in its sole discretion, determines that the~~
15 ~~employee was not adequately notified of the employee's option to participate in the~~
16 ~~defined contribution retirement plan, the board may provide the employee a~~
17 ~~reasonable time within which to make that election, which may extend beyond the~~
18 ~~original six-month decision window.~~

19 2. ~~If an individual who is a deferred member of the public employees retirement system~~
20 ~~on September 30, 2001, is reemployed and by virtue of that employment is again~~
21 ~~eligible for membership in the public employees retirement system under chapter~~
22 ~~54-52, the individual may elect in writing to remain a member of the public employees~~
23 ~~retirement system or if eligible to participate in the defined contribution retirement plan~~
24 ~~established under this chapter to terminate membership in the public employees~~
25 ~~retirement system and become a participating member in the defined contribution~~
26 ~~retirement plan established under this chapter. An election made by a deferred~~
27 ~~member under this section is irrevocable. The board shall accept written elections~~
28 ~~under this section from a deferred member during the period beginning on the date of~~
29 ~~the individual's reemployment and ending upon the expiration of six months after the~~
30 ~~date of that reemployment. If the board, in its sole discretion, determines that the~~
31 ~~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-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-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

1 member of the retirement plan for which that member's new position is eligible. The
2 member's account balance remains in the defined contribution retirement plan, but no
3 new contributions may be made to that account. The member's service credit and
4 salary history that were forfeited as a result of the member's transfer to the defined
5 contribution retirement plan remain forfeited, and service credit accumulation in the
6 new retirement plan begins from the first day of employment in the new position. If the
7 member later returns to employment that is eligible for the defined contribution plan,
8 the member's suspension must be terminated, the member again becomes a member
9 of the defined contribution retirement plan, and the member's account resumes
10 accepting contributions. At the member's option, and pursuant to rules adopted by the
11 board, the member may transfer any available balance as determined by the
12 provisions of the alternate retirement plan into the member's account under this
13 chapter.

14 4. After consultation with its actuary, the board shall determine the method by which a
15 participating member or deferred member may make a written election under this
16 section. If the participating member or deferred member is married at the time of the
17 election, the election is not effective unless the election is signed by the individual's
18 spouse. However, the board may waive this requirement if the spouse's signature
19 cannot be obtained because of extenuating circumstances. At the time of hire the
20 board shall provide an opportunity for an eligible employee to elect to participate in the
21 defined contribution retirement plan under this chapter in lieu of the public employees
22 retirement system under chapter 54-52, pursuant to rules adopted by the board. A new
23 hire may exercise this election anytime from the time of hire until the expiration of thirty
24 days following the completion of a probationary period. If an eligible employee's terms
25 of employment do not provide for a probationary period, that eligible employee has
26 thirty days following the first day of employment within which to exercise this
27 election. The board shall provide an opportunity for eligible employees who are new
28 members of the public employees retirement system under chapter 54-52 to transfer
29 to the defined contribution plan under this chapter pursuant to the rules and policies
30 adopted by the board. An election made by an eligible employee to participate in a
31 member of the public employees retirement system under chapter 54-52 to transfer to

1 ~~the defined contribution retirement plan under this chapter is irrevocable. In the case~~
2 ~~of an eligible employee who makes an election after the date of hire, the election will~~
3 ~~have the effect of that eligible employee transferring~~ For an individual who elects to
4 transfer membership from the public employees retirement system under chapter
5 54-52 to the defined contribution retirement plan under this chapter, and the board
6 shall transfer a lump sum amount from the public employees retirement system fund to
7 the participating member's account in the defined contribution retirement plan under
8 this chapter. However, if the individual terminates employment prior to receiving the
9 lump sum transfer under this section, the election made is ineffective and the
10 individual remains a member of the public employees retirement system under chapter
11 54-52 and retains all the rights and privileges under that chapter. ~~The board shall~~
12 ~~calculate the actuarial present value of the individual's accumulated benefit obligation~~
13 ~~under the public employees retirement system based on the assumption that the~~
14 ~~individual will retire under the earliest applicable normal retirement age. This section~~
15 ~~does not affect an individual's right to health benefits or retiree health benefits under~~
16 ~~chapter 54-52.1.~~

17 5.2. If the board receives notification from the internal revenue service that this section or
18 any portion of this section will cause the public employees retirement system or the
19 retirement plan established under this chapter to be disqualified for tax purposes
20 under the Internal Revenue Code, then the portion that will cause the disqualification
21 does not apply.

22 6.3. A participating member who becomes a temporary employee may still participate in
23 the defined contribution retirement plan upon filing an election with the board within
24 one hundred eighty days of transferring to temporary employee status. The
25 participating member may not become a member of the defined benefit plan as a
26 temporary employee. The temporary employee electing to participate in the defined
27 contribution retirement plan shall pay monthly to the fund an amount equal to eight
28 and twelve-hundredths percent times the temporary employee's present monthly
29 salary. The amount required to be paid by a temporary employee increases by two
30 percent times the temporary employee's present monthly salary beginning with the
31 monthly reporting period of January 2012, and with an additional increase of two

percent, beginning with the reporting period of January 2013. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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.

7.4. A former participating member 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 reenrolling 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.

~~SECTION 14. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:~~

~~54-52.6-15. Board to provide information.~~

~~The board shall provide information to new hires and employees who are eligible to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.~~

~~SECTION 15. REPEAL. Section 54-52.6-03 of the North Dakota Century Code is repealed.~~

SECTION 13. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.
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

1 by the employer may not be included as gross income of the employee in determining
2 tax treatment under this code and the federal Internal Revenue Code until they are
3 distributed or made available. The employer shall pay these employee contributions
4 from the same source of funds used in paying compensation to the employee. The
5 employer shall pay these contributions by effecting an equal cash reduction in the
6 gross salary of the employee or by an offset against future salary increases or by a
7 combination of a reduction in gross salary and offset against future salary increases.
8 Employee contributions paid by the employer must be treated for the purposes of this
9 chapter in the same manner and to the same extent as employee contributions made
10 before the date on which employee contributions were assumed by the employer. An
11 employer shall exercise its option under this subsection by reporting its choice to the
12 board in writing.

13 **SECTION 14. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT**

14 **PLANS.** During the 2013-14 interim, the legislative management shall consider studying the
15 feasibility and desirability of existing and possible state retirement plans. The study must include
16 an analysis of both a defined benefit plan and a defined contribution plan with considerations
17 and possible consequences for transitioning to a state defined contribution plan. The study may
18 not be conducted by the employee benefits programs committee. The legislative management
19 shall report its findings and recommendations, together with any legislation needed to
20 implement the recommendations, to the sixty-fourth legislative assembly.

21 **SECTION 15. APPROPRIATION.** There is appropriated from special funds derived from
22 public employees retirement system income not otherwise appropriated, the sum of \$22,000, or
23 so much of the sum as may be necessary, to the public employees retirement system board for
24 the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending
25 June 30, 2015.

26 **SECTION 16. EFFECTIVE DATE.** Sections 3, 10, and 12 of this Act become effective on
27 October 1, 2013.

28 **SECTION 17. EXPIRATION DATE - SUSPENSION.** Sections 3, 10, and 12 of this Act are
29 effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is
30 suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03, as it existed on
31 September 30, 2013, becomes effective on August 1, 2017.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1452

That the Senate recede from its amendments as printed on pages 1302-1309 of the House Journal and pages 1185-1192 of the Senate Journal and that Engrossed House Bill No. 1452 be amended as follows:

Page 1, line 1, after "to" insert "create a new section to chapter 39-03.1 and a new section to chapter 54-52 of the North Dakota Century Code, relating to expiration of the increase in highway patrolmen's retirement plan and public employees retirement system member and employer contributions,"

Page 1, line 1, after "reenact" insert "sections 39-03.1-09 and 39-03.1-10,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "sections" insert "54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and"

Page 1, line 2, after the first comma insert "subsection 6 of section 54-52.6-02, and sections"

Page 1, line 2, remove the second comma

Page 1, line 2, replace "54-52.6-15" with "54-52.6-09"

Page 1, line 2, after "to" insert "increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system and"

Page 1, line 3, remove "and to repeal section 54-52.6-03 of the"

Page 1, remove line 4

Page 1, line 5, replace "public employees retirement system" with "to provide for a legislative management study; to provide an appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.

2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state 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. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.
3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and

with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1.

SECTION 3. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Reduction in member and employer contributions.

The required increase in the amount of member and employer contributions under sections 1 and 2 of this Act must be reduced to the rate in effect on the effective date of this Act effective on the July first that follows the first valuation of the highway patrolmen's retirement plan showing a ratio of the actuarial value of assets to the actuarial accrued liability of the highway patrolmen's retirement plan that is equal to or greater than one hundred percent."

Page 1, after line 21, insert:

"SECTION 5. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also 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. 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 6. AMENDMENT. Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52-05. Membership and assessments - Employer payment of employee contributions.

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible

to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.

2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must 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. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the 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 or from the levy authorized by subsection 5 of section 57-15-28.1. 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 contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 7. 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.

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, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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 its 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, 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 thereof 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 they became due, penalty and interest to be paid on delinquent contributions may be waived. 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. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 8. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution.

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

SECTION 9. AMENDMENT. Section 54-52-06.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution.

Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Member contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

SECTION 10. AMENDMENT. Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment.

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

Reduction in member and employer contributions.

The required increase in the amount of member and employer contributions under sections 5, 6, 7, 8, 9, 10, 13, and 15 of this Act must be reduced to the rate in effect on the effective date of this Act effective on the July first that follows the first valuation of the public employees retirement system main system showing a ratio of the actuarial value of assets to the actuarial accrued liability of the public employees retirement system main system that is equal to or greater than one hundred percent."

Page 2, line 12, replace "is hired after July 30, 2013" with "elects to participate in the retirement plan under this chapter"

Page 3, after line 2, insert:

"SECTION 13. AMENDMENT. Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member 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. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The

temporary employee shall also 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. An employer may not pay the temporary employee's contributions. 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."

Page 6, line 3, remove "At the time of hire the"

Page 6, replace lines 4 through 10 with "The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board."

Page 6, line 11, replace "an eligible employee to participate in" with "a member of the public employees retirement system under chapter 54-52 to transfer to"

Page 6, line 12, remove "In the case of an eligible employee"

Page 6, remove line 13

Page 6, line 14, replace "eligible employee transferring" with "For an individual who elects to transfer"

Page 6, line 16, remove "and"

Page 6, line 22, remove "The board shall calculate the actuarial present value of the individual's"

Page 6, remove lines 23 and 24

Page 6, line 25, remove "retirement age."

Page 7, remove lines 27 through 31

Page 8, replace lines 1 through 8 with:

"SECTION 15. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and 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. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly

salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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 thereof after the payment became due.

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 16. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits programs committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 17. APPROPRIATION. There is appropriated from special funds derived from public employees retirement system income not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 18. EFFECTIVE DATE. Sections 4, 12, and 14 of this Act become effective on October 1, 2013.

SECTION 19. EXPIRATION DATE - SUSPENSION. Sections 4, 12, and 14 of this Act are effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03, as it existed on September 30, 2013, becomes effective on August 1, 2017."

Renumber accordingly