

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2082
(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

AN ACT to create and enact a new subsection to section 54-52-17.4 of the North Dakota Century Code, relating to purchase of service credit under the public employees retirement system; to amend and reenact subsection 11 of section 54-52-04, subsections 4 and 6 of section 54-52-17, subsection 4 of section 54-52-17.4, and sections 54-52-17.5, 54-52-17.10, 54-52-26, 54-52.2-03, and 54-52.2-04 of the North Dakota Century Code, relating to funding of administrative expenses of the deferred compensation plan, computation of benefits, determination of normal retirement date, beneficiary designations, cost of credit purchases, postretirement adjustments, prior service retiree adjustments, confidentiality of records, and deferred compensation under the public employees retirement system; to repeal section 54-52-17.9 of the North Dakota Century Code, relating to prior service retiree adjustments under the public employees retirement system; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 54-52-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. The board shall fund the administrative expenses of chapter 54-52.2 from funds collected under chapters 54-52, 54-52.1, and 54-52.3 and from fines collected from deferred compensation services providers, subject to appropriation by the legislative assembly.

SECTION 2. AMENDMENT. Subsections 4 and 6 of section 54-52-17 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The board shall calculate retirement benefits as follows:
 - a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:
 - (1) Service benefit equals ~~one and eighty nine hundredths~~ two percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals ~~one and eighty nine hundredths~~ two percent of final average salary multiplied by the number of years of prior service employment.
 - (3) ~~All participants who retired before August 1, 1997, are entitled to benefits calculated at one and seventy seven hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning August 1, 1997.~~
 - b. Single life benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, which must be determined as follows:
 - (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary

multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.

- (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
 - (3) A participant who retired before August 1, 1995, is entitled to benefits calculated at two and eighty hundredths percent multiplied by the second ten years of judicial service, with the increased benefits payable beginning August 1, 1995.
 - c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.
 - d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
 - e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars. ~~A participant who, on July 31, 1997, is receiving disability retirement benefits that are not based upon the benefit multiplier is entitled to receive an increase in benefits equal to five percent of the individual's present benefit with the increased benefits payable beginning August 1, 1997.~~
 - f. A participating member who is a vested permanent employee is entitled to purchase additional years of service credit to enable the member to qualify for the normal retirement date defined by subdivision a of subsection 3. The years of service purchased must be added to the years of service employment under paragraph 1 of subdivision a for calculating the service benefit.
6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's surviving spouse. ~~However, if there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing, the board shall pay the member's account balance to the member's beneficiary or, if there is no named beneficiary, to the member's estate designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If there are no remaining primary beneficiaries, the board shall pay the~~

member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:

- a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:
 - (1) A lump sum payment of the member's retirement account as of the date of death.
 - (2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.
- b. The surviving spouse of all other members may select one of the following options:
 - (1) A lump sum payment of the member's retirement account as of the date of death.
 - (2) Payments for sixty months as calculated for the deceased member as if the member was of normal retirement age at the date of death.
 - (3) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.
 - (4) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.

SECTION 3. AMENDMENT. Subsection 4 of section 54-52-17.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The member may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.

SECTION 4. A new subsection to section 54-52-17.4 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion.

SECTION 5. AMENDMENT. Section 54-52-17.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.5. Postretirement adjustments. An individual or the individual's beneficiary who, on July 31, ~~1999~~ 2001, is receiving retirement benefits under subdivision a, c, d, or e of subsection 4 of section 54-52-17, ~~or disability retirement benefits under subdivision e of subsection 4 of section 54-52-17,~~ is entitled to receive an increase in benefits equal to ~~eight~~ six percent of the individual's present benefits with the increase payable beginning August 1, ~~1999~~ 2001.

SECTION 6. AMENDMENT. Section 54-52-17.10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.10. Prior service retiree adjustment. Prior service retirees who are receiving benefits under this chapter on July 31, ~~1999~~ 2001, are entitled to receive an increase in benefits equal to ~~eight~~ six percent of the individual's present benefit, with the increased benefits payable beginning August 1, ~~1999~~ 2001. A prior service retiree is a former participating employee who receives a supplemental monthly payment from the retirement system based upon the original prior service credit system.

SECTION 7. AMENDMENT. Section 54-52-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-26. Confidentiality of records. All records relating to the retirement benefits of a member or a beneficiary under this chapter, chapter 54-52.2, and chapter 54-52.6 are confidential and are not public records. ~~This section does not prohibit any party from obtaining this information from other agencies or governmental sources.~~ Information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the member specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.
5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.
6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.
7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.
8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 54-52-17.6. The

information disclosed under this subsection must be limited to information necessary for drafting the order.

SECTION 8. AMENDMENT. Section 54-52.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.2-03. Deferred compensation program - Administration - Contract for services.

The administration of the deferred compensation program for each state agency, department, board, commission, or institution is under the direction of the public employees retirement board. Each county, city, or other political subdivision shall designate an officer to administer the deferred compensation program or appoint the public employees retirement board to administer the program on its behalf. Payroll reductions must be made in each instance by the appropriate payroll officer. The public employees retirement board shall administer the deferred compensation program based on a plan one or more plans in compliance with the appropriate provisions of the Internal Revenue Code and regulations adopted under those provisions. Not later than January 1, 1999, all plan assets and income must be held in trust, custodial accounts, or contracts as described in section 401(f) of the Internal Revenue Code [26 U.S.C. 401(f)] for the exclusive benefit of participants and their beneficiaries as required by section 457 of the Internal Revenue Code [26 U.S.C. 457]. Once the trust, custodial account, or contract is established as required by this section, the board shall act as fiduciary of the plan to the extent required by section 457 of the Internal Revenue Code [26 U.S.C. 457] and the board is authorized to do all things necessary for the proper administration of the plan to ensure that the plan maintains its qualified status.

SECTION 9. AMENDMENT. Section 54-52.2-04 of the North Dakota Century Code is amended and reenacted as follows:

54-52.2-04. Definition - Employee. For the purpose of this chapter, "employee" means any person, whether appointed, elected, or under contract, providing services for employed by the state, county, city, town, or other a political subdivision, for which compensation is paid who is at least eighteen years of age and employed in an approved and regularly funded position of unlimited duration for twenty hours or more per week and at least five months each year. For purposes of this chapter, "employee" also means a member of the legislative assembly.

SECTION 10. REPEAL. Section 54-52-17.9 of the North Dakota Century Code is repealed.

SECTION 11. EFFECTIVE DATE. Section 4 of this Act becomes effective on the date the board of trustees of the public employees retirement system receives a letter ruling from the internal revenue service that section 4 of this Act does not jeopardize the qualified status of the public employees retirement system. The board shall notify the legislative council of the effective date of section 4 of this Act.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2082.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 91 Nays 0 Absent 7

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State