

BILL NO.

Introduced by

Employee Benefits Programs Committee

(At the request of the Department of Corrections and Rehabilitation)

1 A BILL for an Act to create and enact a new section to chapter 54-52 of the North Dakota
2 Century Code, relating to participation by protective services employees of the department of
3 corrections and rehabilitation in the defined benefit retirement plan; to amend and reenact
4 section 54-52-01, subsection 3 of section 54-52-05, and subsection 3 of section 54-52-17 of the
5 North Dakota Century Code, relating to participation by protective services employees of the
6 department of corrections and rehabilitation in the defined benefit retirement plan; and to
7 provide an appropriation.

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

9 **SECTION 1. AMENDMENT.** Section 54-52-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **54-52-01. Definition of terms.**

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

- 13 1. "Account balance" means the total contributions made by the employee, vested
14 employer contributions under section 54-52-11.1, the vested portion of the vesting
15 fund as of June 30, 1977, and interest credited thereon at the rate established by the
16 board.
- 17 2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any
18 person designated by a participating member to receive benefits.
- 19 3. "Correctional officer" means a participating member who is employed as a correctional
20 officer by a political subdivision.
- 21 4. "Eligible employee" means all permanent employees who meet all of the eligibility
22 requirements set by this chapter and who are eighteen years or more of age, and
23 includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and
24 54-52-02.12, and nonteaching employees of the superintendent of public instruction,

1 including the superintendent of public instruction, who elect to transfer from the
2 teachers' fund for retirement to the public employees retirement system under section
3 54-52-02.13, and employees of the state board for career and technical education who
4 elect to transfer from the teachers' fund for retirement to the public employees
5 retirement system under section 54-52-02.14. Eligible employee does not include
6 nonclassified state employees who elect to become members of the retirement plan
7 established under chapter 54-52.6 but does include employees of the judicial branch
8 and employees of the board of higher education and state institutions under the
9 jurisdiction of the board.

10 5. "Employee" means any individual employed by a governmental unit, whose
11 compensation is paid out of the governmental unit's funds, or funds controlled or
12 administered by a governmental unit, or paid by the federal government through any of
13 its executive or administrative officials; licensed employees of a school district means
14 those employees eligible to participate in the teachers' fund for retirement who, except
15 under subsection 2 of section 54-52-17.2, are not eligible employees under this
16 chapter.

17 6. "Employer" means a governmental unit.

18 7. "Firefighter" means a participating member who is employed as a firefighter by a
19 political subdivision and, notwithstanding subsection 13, for an individual employed
20 after July 31, 2017, is employed at least thirty-two hours per week and at least twenty
21 weeks each year of employment. A firefighter who is a participating member of the law
22 enforcement retirement plan created by this chapter who begins employment after
23 July 31, 2017, is ineligible to participate concurrently in any other retirement plan
24 administered by the public employees retirement system. The term does not include a
25 firefighter employee of the North Dakota national guard.

26 8. "Funding agent" or "agents" means an investment firm, trust bank, or other financial
27 institution which the retirement board may select to hold and invest the employers' and
28 members' contributions.

29 9. "Governmental unit" means the state of North Dakota, except the highway patrol for
30 members of the retirement plan created under chapter 39-03.1, or a participating
31 political subdivision thereof.

- 1 10. "National guard security officer or firefighter" means a participating member who is:
- 2 a. A security police employee of the North Dakota national guard; or
- 3 b. A firefighter employee of the North Dakota national guard.
- 4 11. "Participating member" means an eligible employee who through payment into the
- 5 plan has established a claim against the plan.
- 6 12. "Peace officer" means a participating member who is a peace officer as defined in
- 7 section 12-63-01 and is employed as a peace officer by the bureau of criminal
- 8 investigation or by a political subdivision and, notwithstanding subsection 13, for
- 9 persons employed after August 1, 2005, is employed thirty-two hours or more per
- 10 week and at least twenty weeks each year of employment. A peace officer who is a
- 11 participating member of the law enforcement retirement plan created by this chapter
- 12 who begins employment after August 1, 2005, is ineligible to participate concurrently in
- 13 any other retirement plan administered by the public employees retirement system.
- 14 13. "Permanent employee" means a governmental unit employee whose services are not
- 15 limited in duration and who is filling an approved and regularly funded position in an
- 16 eligible governmental unit, and is employed twenty hours or more per week and at
- 17 least twenty weeks each year of employment.
- 18 14. "Prior service" means service or employment before July 1, 1966.
- 19 15. "Prior service credit" means such credit toward a retirement benefit as the retirement
- 20 board may determine under the provisions of this chapter.
- 21 16. "Protective services employee" means a participating member who is employed by the
- 22 department of corrections and rehabilitation under the job classification of protective
- 23 services or who is employed by the department of corrections and rehabilitation in the
- 24 supervisory chain of protective services employees and, notwithstanding the definition
- 25 of "permanent employee", for an individual employed after June 30, 2021, who is
- 26 employed thirty-two hours or more per week and at least twenty weeks each year of
- 27 employment. A protective services employee who is a participating member of the
- 28 protective services retirement plan created by this chapter who begins employment
- 29 after June 30, 2021, is ineligible to participate concurrently in any other retirement plan
- 30 administered by the public employees retirement system.

- 1 17. "Public employees retirement system" means the retirement plan and program
2 established by this chapter.
- 3 ~~17.~~18. "Retirement" means the acceptance of a retirement allowance under this chapter upon
4 either termination of employment or termination of participation in the retirement plan.
- 5 ~~18.~~19. "Retirement board" or "board" means the governing authority created under section
6 54-52-03.
- 7 ~~19.~~20. "Seasonal employee" means a participating member who does not work twelve
8 months a year.
- 9 ~~20.~~21. "Service" means employment on or after July 1, 1966.
- 10 ~~21.~~22. "Service benefit" means the credit toward retirement benefits as determined by the
11 retirement board under the provisions of this chapter.
- 12 ~~22.~~23. "Temporary employee" means a governmental unit employee who is not eligible to
13 participate as a permanent employee, who is at least eighteen years old and not
14 actively contributing to another employer-sponsored pension fund, and, if employed by
15 a school district, occupies a noncertified teacher's position.
- 16 ~~23.~~24. "Wages" and "salaries" means the member's earnings in eligible employment under
17 this chapter reported as salary on the member's federal income tax withholding
18 statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125,
19 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as
20 payments for unused sick leave, personal leave, vacation leave paid in a lump sum,
21 overtime, housing allowances, transportation expenses, early retirement incentive pay,
22 severance pay, medical insurance, workforce safety and insurance benefits, disability
23 insurance premiums or benefits, or salary received by a member in lieu of previously
24 employer-provided fringe benefits under an agreement between the member and
25 participating employer. Bonuses may be considered as salary under this section if
26 reported and annualized pursuant to rules adopted by the board.

27 **SECTION 2. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century
28 Code is amended and reenacted as follows:

- 29 3. Each employer, at ~~its~~the option ~~of that employer~~, may pay all or a portion of the
30 employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2,
31 54-52-06.3, ~~and 54-52-06.4,~~ and section 3 of this Act, or the employee contributions

1 required to purchase service credit on a pretax basis pursuant to subsection 5 of
2 section 54-52-17.4. Employees may not receive the contributed amounts directly once
3 the employer has elected to pay the employee contributions. The amount paid must be
4 paid by the employer in lieu of contributions by the employee. If the state determines
5 not to pay the contributions, the amount that would have been paid must continue to
6 be deducted from the employee's compensation. If contributions are paid by the
7 employer, ~~they~~the contributions must be treated as employer contributions in
8 determining tax treatment under this code and the federal Internal Revenue Code. If
9 contributions are paid by the employer, ~~they~~the contributions may not be included as
10 gross income of the employee in determining tax treatment under this code and the
11 Internal Revenue Code until ~~they~~the contributions are distributed or made available.
12 The employer shall pay these employee contributions from the same source of funds
13 used in paying compensation to the employee. The employer shall pay these
14 contributions by effecting an equal cash reduction in the gross salary of the employee
15 or by an offset against future salary increases or by a contribution of a reduction in
16 gross salary and offset against future salary increases. If employee contributions are
17 paid by the employer, ~~they~~the employee contributions must be treated for the
18 purposes of this chapter in the same manner and to the same extent as employee
19 contributions made ~~prior to~~before the date on which employee contributions were
20 assumed by the employer. An employer exercising ~~its~~the employer's option under this
21 subsection shall report ~~its~~the employer's choice to the board in writing.

22 **SECTION 3.** A new section to chapter 54-52 of the North Dakota Century Code is created
23 and enacted as follows:

24 **Contribution by protective services employees - Employer contribution.**

25 Each protective services employee who is a member of the public employees retirement
26 system is assessed and shall pay monthly four percent of the employee's monthly salary. The
27 assessment must be deducted and retained out of the employee's salary in equal monthly
28 installments. The protective services employee's employer shall contribute an amount
29 determined by the board to be actuarially required to support the level of benefits specified in
30 section 54-52-17. The employer's contribution must be paid from funds appropriated for salary
31 or from any other funds available for such purposes. If the protective services employee's

1 assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall
2 contribute, in addition, an amount equal to the required protection services employee's
3 assessment.

4 **SECTION 4. AMENDMENT.** Subsection 3 of section 54-52-17 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 3. Retirement dates are defined as follows:

7 a. Normal retirement date, except for a national guard security officer or firefighter, a
8 firefighter employed by a political subdivision, ~~or~~ a peace officer or correctional
9 officer employed by the bureau of criminal investigation or by a political
10 subdivision, or a protective services employee, is:

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

13 (2) When the member has a combined total of years of service credit and years
14 of age equal to eighty-five and has not received a retirement benefit under
15 this chapter.

16 b. Normal retirement date for members first enrolled after December 31, 2015,
17 except for a national guard security officer or firefighter, a firefighter employed by
18 a political subdivision, a peace officer or correctional officer employed by the
19 bureau of criminal investigation or by a political subdivision, ~~or~~ a supreme court
20 or district court judge, or a protective services employee, is:

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

23 (2) When the member has a combined total of years of service credit and years
24 of age equal to ninety and the member attains a minimum age of sixty and
25 has not received a retirement benefit under this chapter.

26 c. Normal retirement date for a national guard security officer or firefighter is:

27 (1) The first day of the month next following the month in which the national
28 guard security officer or firefighter attains the age of fifty-five years and has
29 completed at least three eligible years of employment; or

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

1 officer employed by the bureau of criminal investigation or by a political
2 subdivision, or a protective services employee, is the first day of the month next
3 following the month in which the member attains the age of fifty-five years and
4 has completed three years of eligible employment. For a national guard security
5 officer or firefighter, early retirement date is the first day of the month next
6 following the month in which the national guard security officer or firefighter
7 attains the age of fifty years and has completed at least three years of eligible
8 employment. For a firefighter employed by a political subdivision or a peace
9 officer or correctional officer employed by the bureau of criminal investigation or
10 by a political subdivision, or a protective services employee, early retirement date
11 is the first day of the month next following the month in which the peace officer,
12 firefighter, or correctional officer, or protective services employee attains the age
13 of fifty years and has completed at least three years of eligible employment.

14 h-i. Disability retirement date is the first day of the month after a member becomes
15 permanently and totally disabled, according to medical evidence called for under
16 the rules of the board, and has completed at least one hundred eighty days of
17 eligible employment. For supreme and district court judges, permanent and total
18 disability is based solely on a judge's inability to perform judicial duties arising out
19 of physical or mental impairment, as determined pursuant to rules adopted by the
20 board or as provided by subdivision a of subsection 3 of section 27-23-03.

21 (1) A member is eligible to receive disability retirement benefits only if the
22 member became disabled during the period of eligible employment and
23 applies for disability retirement benefits within twelve months of the date the
24 member terminates employment.

25 (2) A member is eligible to continue to receive disability benefits as long as the
26 permanent and total disability continues and the member submits the
27 necessary documentation and undergoes medical testing required by the
28 board, or for as long as the member participates in a rehabilitation program
29 required by the board, or both. If the board determines a member no longer
30 meets the eligibility definition, the board may discontinue the disability
31 retirement benefit. The board may pay the cost of any medical testing or

1 rehabilitation services the board deems necessary and these payments are
2 appropriated from the retirement fund for those purposes. A member's
3 receipt of disability benefits under this section is limited to receipt from the
4 fund to which the member was actively contributing at the time the member
5 became disabled.

6 **SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the general
7 fund in the state treasury, not otherwise appropriated, the sum of \$1,800,000, or so much of the
8 sum as may be necessary, to the department of corrections and rehabilitation for the purpose of
9 implementing this Act, for the biennium beginning July 1, 2021, and ending June 30, 2023.