North Dakota Legislative Council

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LC# 23.9515.01000
January 2023

HOUSE BILL NO. 1040 - SUMMARY

This memorandum summarizes House Bill No. 1040 (2023) as introduced. In general, the bill provides for closure of the Public Employees Retirement System (PERS) Main System defined benefit (DB) plan for new hires; routing of new hires into a defined contribution (DC) plan; a general fund appropriation to PERS to pay down the unfunded liability on the Main System DB plan; and funding from the legacy earnings fund to pay down the unfunded liability on the Main System DB plan and to cover administrative services.

CLOSURE OF THE DEFINED BENEFIT PLAN

The bill provides for closure of the DB plan to new hires effective January 1, 2025. This closure does not affect the:

- Judges retirement plan;
- Public safety plans;
- Highway patrol retirement plan;
- Teachers' retirement plan;
- Higher education retirement plan; or
- Job service retirement plan.

This closure affects all other state employees, including appointed and elected officials and temporary employees, and the 374 political subdivisions that have elected to participate in the PERS DB plan. The state and political subdivision employees participating in the DB plan will continue to participate in the DB plan. Effective January 1, 2025, new state and participating political subdivision employees will be routed to participate in the DC plan; they will not participate in the DB plan.

Employer Contribution

Political Subdivisions

A political subdivision is assessed a 1 percent additional employer contribution effective January 1, 2025.

State

A state employer is required to pay an actuarially determined employer contribution rate that is calculated based on a closed period of 20.5 years. This rate is the amount required to cover both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the plan over 20.5 years. This rate is set in November of each even-numbered year to allow agencies to submit budgets for the upcoming legislative session.

Employee Eligibility

The bill provides once an individual becomes a participating member of the PERS Main System DB plan, the individual will stay in that plan even if the individual is rehired after December 31, 2024. However, an employee who moves from a different PERS plan, such as the judges plan or public safety plan, to a Main System position would move into the DC plan.

DEFINED CONTRIBUTION PLAN

The bill provides that effective January 1, 2025, new state and participating political subdivision hires automatically will be routed to participate in the DC plan under North Dakota Century Code Chapter 54-52.6. Currently, participation in the DC plan is limited to nonclassified state employees who at the time of hire opt to participate in the DC plan instead of the DB plan.

Contribution

The bill provides DC plan participants an opportunity at the time of hire to select the amount of employee contribution under the DC plan. This is a one-time opportunity to select the amount of employee contribution under the DC plan. There will be an automatic employee contribution of 4 percent of wages and an automatic employer contribution of 5.26 percent for a total of a 9.26 percent contribution. The employee has the option of contributing an additional amount up to 3 percent, with an equal employer match, for up to an additional 6 percent.

If a state employee does not maximize the 3 percent additional contribution at the time of hire, the employee can utilize the PERS deferred compensation (457) plan under Chapter 54-54.2. Under the 457 plan, the employee may contribute up to that 3 percent amount with an equal employer match. This option under the 457 plan can be utilized at any time after hire. This option does not apply to political subdivision employees.

Employer Contribution for DB Plan

In addition to the employer contribution for the employee's DC plan, each state employer shall contribute to the DB plan an amount equal to the amount of the actuarially determined employer contribution rate minus the amount of the DB plan and 457 employer contribution amounts. If a state employer uses federal funds to pay any of the state employee's wages, the employer shall use state funds to pay this additional contribution.

Plan Design

The DC plan the new hires are routed into is based on the existing DC plan, but there are some differences. First, the employee and employer have a variable contribution rate, based on the employee's contribution decision made at the time of hire. Additionally, the investment option for the new DC plan must include one or more annuity products as part of the investment menu. Additionally, PERS shall create a default investment option that must include an in-plan annuity. The existing DC plan has an investment menu, but does not provide for annuity products. Finally, PERS or a PERS vendor is required to provide a DC plan participant with education and advice regarding the DC plan program and investing.

LEGACY EARNINGS FUND

The bill revises the existing legacy funding in place, replacing the legacy sinking and interest fund mechanism with legacy earnings fund money. Existing funding resulted in $48 million being transferred to PERS for the 2021-23 biennium. The legacy earnings fund would provide for $70 million to be transferred to PERS each biennium for administrative expenses for the DB and DC plans and for the unfunded liability of the Main System DB plan. This funding would continue until the DB plan reaches 90 percent funding. The funding stream would resume if the DB plan funding level falls below 70 percent.

GENERAL FUND APPROPRIATION

The bill provides a $250 million general fund appropriation and transfer to PERS for the 2023-25 biennium for the purpose of reducing the unfunded liability of the PERS Main System plan.

SECTION-BY-SECTION SUMMARY

North Dakota Century Code

Section 1

Provides for elimination of the legacy sinking and interest fund mechanism to fund the unfunded liability of the PERS Main System plan.

Section 2

Amends a Teachers' Fund for Retirement provision that allows for multiple plan eligibility to make it clear the new hires are not eligible for multiple fund calculations.

Section 3

Provides for $70 million of legacy earnings fund money to be transferred to PERS to fund the Main System unfunded liability and to be used for administrative expenses of the DB and DC plans.

Section 4

Provides for the definition of "deferred member" and amends the definition of "eligible employee" to distinguish between pre-January 2025 employees and post-2024 employees.

Section 5

Provides for post-2024 elected and appointed state officials to join the DC plan and clarifies if an official is a participating member or deferred member in the DB plan at the time of appointment, the official will continue in the DB plan.

Section 6

Provides a temporary employee may elect to participate in the DC plan; and clarifies a temporary employee who is a participating member of the DB plan who becomes a permanent employee will continue in the DB plan.

Section 7

Provides a newly elected county official may elect to participate in the DC plan.

Section 8

Provides political subdivision appointed officials may elect to participate in the DC plan.

Section 9

Provides for closure of the PERS main system DB plan for new hires; clarifies once an employee participates in the DB retirement plan, even if rehired at a later date, remains in the DB plan; provides all new hires are required to participate in the DC retirement plan; and clarifies if a DC retirement plan member joins one of the enumerated DB retirement plans, the member is eligible to participate in that enumerated DB retirement plan.

Section 10

Section 10 is a housekeeping change.

Section 11

Provides the employer contribution rates for the DB retirement plan are increased 1 percent for political subdivision employers, and are changed to an actuarially determined rate for state employers. The actuarial rate is amortized over 20.5 years and is based on the PERS fund valuation from the previous even-numbered year.

Section 12

Clarifies how funds paid into the PERS retirement plans may be used by PERS.

Section 13

Clarifies Section 9 applies to dual eligible language relating to the higher education alternative plan, Highway Patrol retirement plan, and Teachers' Fund for Retirement plan.

Section 14

Provides the 457 plan may be used by DC members who do not utilize their full 3 percent optional contribution in the DC plan.

Section 15

Defines the terms "governmental unit," "normal retirement age," and "temporary employee" and revises the definitions for the terms "deferred member," "eligible employee," "employee," "employer," and "participating member." These definitions recognize political subdivisions and temporary employees will be participating in the DC plan.

Section 16

Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan. This does not affect existing nonclassified state employees already participating in the DC plan.

Section 17

Provides except for those employees who already have participated in the DB retirement plan, all new Main System plan hires will be routed to participate in the DC retirement plan.

Section 18

Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan.

Section 19
Clarifies PERS shall follow federal guidelines regarding qualified default investment alternatives; directs PERS to provide an investment menu of investment options and, in doing so, meet certain requirements; and requires PERS to use a qualified default investment alternative that includes an in-plan annuity.

Section 20
Directs PERS to select one or more annuity providers to provide annuity options under the DC retirement plan and provides guidelines for PERS to consider in selecting annuity providers to ensure the financial health and stability of the annuity provider.

Section 21
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan.

Section 22
Provides for the employer and employee contribution rates for the DC retirement plan, requiring an employee contribute at least 4 percent of wages and allowing an optional contribution of up to an additional 3 percent. The employer required contribution is 5.26 percent of wages, and matching contributions for any additional contribution made by the employee.

Section 23
Provides a state employer is required to pay an additional contribution based on the actuarially determined employer contribution, less the amount of the employer contribution under Section 22. Additionally, if a state employer uses federal funds to pay any or all of an employee's wages, the employer shall use state funds to pay this additional contribution.

Section 24
Provides a temporary employee may elect to participate in the DC plan.

Section 25
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan.

Section 26
Clarifies distribution under the DC plan may include annuities.

Section 27
Directs PERS or its vendor to educate participating members regarding the DC retirement plan.

Section 28
Clarifies the use of the term "deferred member."

Section 29
Directs PERS to make an annual report to the Employee Benefits Programs Committee on the status of the DC retirement plan.

Section 30
Repeals the section that decreases DB plan contributions upon the funds reaching 100 percent funding.

Special Clauses

Section 31
Provides a $250 million general fund appropriation to PERS for the purpose of reducing the unfunded liability of the PERS Main System plan.

Section 32
Clarifies the actuarially determined employer contribution rate applies to employer contributions beginning January 2025, using a contribution rate based on the July 1, 2022, actuarial analysis.

Section 33
Provides the legacy fund provisions of Sections 1 and 3 and the general fund appropriation become effective July 1, 2023, and the remainder of the bill becomes effective January 1, 2025.