

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1146

Introduced by

Representatives Lefor, Dockter, Schauer, Stemen, M. Ruby

Senators Davison, Dever, Hogue

1 A BILL for an Act to amend and reenact sections 54-52-02.1, 54-52-06, 54-52.6-01,
2 54-52.6-02.2, 54-52.6-05, and 54-52.6-09.5 of the North Dakota Century Code, relating to
3 employer eligibility to participate in the public employees retirement system defined contribution
4 retirement plan, employer contribution requirements for the defined benefit and defined
5 contribution retirement plans, and employee eligibility to elect to transfer to the defined
6 contribution retirement plan; to provide for retroactive application; and to declare an emergency.

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

8 **SECTION 1. AMENDMENT.** Section 54-52-02.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **54-52-02.1. Political subdivisions authorized to join public employees retirement**
11 **system.**

- 12 1. A political subdivision may, on behalf of its permanent employees, on behalf of its
13 peace officers, firefighters, and correctional officers separately from its other
14 employees, and permanent noncertified employees only in the case of school districts,
15 enter agreements with the retirement board for the purpose of extending the benefits
16 of the public employees retirement system, as provided in this chapter or chapter
17 54-52.6, to those employees. The agreement may, in accordance with this chapter and
18 chapter 54-52.6, contain provisions relating to benefits, contributions, effective date,
19 modification, administration, and other appropriate provisions as the retirement board
20 and the political subdivision agree upon, but the agreement must provide:
- 21 a. The political subdivision will contribute on behalf of each eligible employee an
22 amount equal to that provided in section 54-52-06 or 54-52-06.3 for peace

1 officers, firefighters, and correctional officers participating separately from other
2 political subdivision employees.

3 b. A portion of the moneys paid by the political subdivision may be used to pay
4 administrative expenses of the retirement board.

5 2. Notwithstanding any other provision of law, a political subdivision having an existing
6 police or firefighter pension plan may merge that plan into the public employees
7 retirement system under rules adopted by and in a manner determined by the board.

8 3. Notwithstanding any other provision of this chapter, a political subdivision of this state
9 not currently participating in the public employees retirement system may not become
10 a participant in the retirement system until an actuarial study is performed under the
11 direction of the board to calculate the required employer contribution for any past
12 service liability and the required employer contribution must be an amount determined
13 sufficient to amortize and fund any past service liability over a period not to exceed
14 thirty years as determined by the board. Any fees incurred in performing the actuarial
15 study must be paid for by the political subdivision in a manner determined by the
16 board.

17 **SECTION 2. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **54-52-06. Employer's contribution to retirement plan - Report to the employee**
20 **benefits programs committee. (Effective through December 31, 2025)**

21 1. Each governmental unit shall contribute an amount equal to four and
22 twelve-hundredths percent of the monthly salary or wage of a participating member.
23 Governmental unit contributions increase by one percent of the monthly salary or
24 wage of a participating member beginning with the monthly reporting period of
25 January 2012; with an additional increase of one percent, beginning with the reporting
26 period of January 2013; with an additional increase of one percent, beginning with the
27 monthly reporting period of January 2014; and with an additional increase of
28 one percent, beginning with the monthly reporting period of January 2024. For a
29 participating member who first enrolls after December 31, 2019, the governmental unit
30 shall contribute an additional amount equal to one and fourteen-hundredths percent of
31 the monthly salary or wage of the participating member.

- 1 2. For those members who elect to exercise their rights under section 54-52-17.14, the
2 employing governmental unit, or in the case of a member not presently under covered
3 employment the most recent employing governmental unit, shall pay the associated
4 employer contribution. If the employee's contribution is paid by the governmental unit
5 under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition,
6 an amount equal to the required employee's contribution. Each governmental unit
7 shall pay the contribution monthly, or in the case of an election made pursuant to
8 section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's
9 funds appropriated for payroll and salary or any other funds available for these
10 purposes. Any governmental unit failing to pay the contributions monthly, or in the
11 case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to
12 otherwise comply with the board's established wage reporting or payroll reporting
13 process requirements, is subject to a civil penalty of fifty dollars and, as interest,
14 one percent of the amount due for each month of delay or fraction of a month after the
15 payment became due. In lieu of assessing a civil penalty or one percent per month, or
16 both, interest at the actuarial rate of return may be assessed for each month the
17 contributions are delinquent. If contributions are paid within ninety days of the date the
18 contributions became due, penalty and interest to be paid on delinquent contributions
19 may be waived.
- 20 3. An employer is required to submit contributions for any past eligible employee who
21 was employed after July 1, 1977, for which contributions were not made if the
22 employee would have been eligible to become vested had the employee participated
23 and if the employee elects to join the public employees retirement system. Employer
24 contributions may not be assessed for eligible service that an employee has waived
25 pursuant to subsection 1 of section 54-52-05.
- 26 4. Annually, the board shall report to the employee benefits programs committee the
27 contributions necessary, as determined by the actuarial study, to maintain the fund's
28 actuarial soundness.

29 **Employer's contribution to retirement plan - Report to the employee benefits**
30 **programs committee. (Effective after December 31, 2025)**

- 1 1. a. As determined by actuarial valuations, each state governmental unit that receives
2 budgetary approval from the legislative assembly shall contribute to the defined
3 benefit plan an amount on a level percent of compensation basis for all main
4 system defined benefit retirement plan employees and all defined contribution
5 retirement plan employees sufficient under the actuarial valuation to meet both
6 the normal cost plus the actuarially determined amount required to amortize the
7 unfunded accrued liability of the main plan over a closed period of thirty and
8 one-half years, beginning January 1, 2026, and continuing through June 30,
9 2056. By November fifteenth of each even-numbered year the board shall publish
10 the contribution rate required under this subsection. The board shall calculate this
11 rate based on the July first actuarial report of that year. In lieu of each state
12 governmental unit that receives budgetary approval from the legislative assembly
13 contributing the additional actuarially determined rate, the legislative assembly
14 may authorize a transfer to the public employees retirement system fund in an
15 amount equal to or greater than the actuarially determined amount as most
16 recently published by the board for the succeeding biennium.
17 b. Each participating political subdivision and state governmental unit that does not
18 receive budgetary approval from the legislative assembly shall contribute an
19 amount equal to eight and twelve-hundredths percent of the monthly salary or
20 wage of a participating member.
21 c. For a participating member who first enrolls after December 31, 2019, a
22 participating political subdivision shall contribute an additional amount equal to
23 one and fourteen-hundredths percent of the monthly salary or wage of the
24 participating member.
25 2. For those members who elect to exercise their rights under section 54-52-17.14, the
26 employing governmental unit, or in the case of a member not presently under covered
27 employment the most recent employing governmental unit, shall pay the associated
28 employer contribution. If the employee's contribution is paid by the governmental unit
29 under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition,
30 an amount equal to the required employee's contribution. Each governmental unit
31 shall pay the contribution monthly, or in the case of an election made pursuant to

1 section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's
2 funds appropriated for payroll and salary or any other funds available for these
3 purposes. Any governmental unit failing to pay the contributions monthly, or in the
4 case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to
5 otherwise comply with the board's established wage reporting or payroll reporting
6 process requirements, is subject to a civil penalty of fifty dollars and, as interest, one
7 percent of the amount due for each month of delay or fraction of a month after the
8 payment became due. In lieu of assessing a civil penalty or one percent per month, or
9 both, interest at the actuarial rate of return may be assessed for each month the
10 contributions are delinquent. If contributions are paid within ninety days of the date the
11 contributions became due, penalty and interest to be paid on delinquent contributions
12 may be waived.

13 3. An employer is required to submit contributions for any past eligible employee who
14 was employed after July 1, 1977, for which contributions were not made if the
15 employee would have been eligible to become vested had the employee participated
16 and if the employee elects to join the public employees retirement system. Employer
17 contributions may not be assessed for eligible service that an employee has waived
18 pursuant to subsection 1 of section 54-52-05.

19 4. Annually, the board shall report to the employee benefits programs committee the
20 contributions necessary, as determined by the actuarial study, to maintain the fund's
21 actuarial soundness.

22 **SECTION 3. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **54-52.6-01. Definition of terms.**

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

- 26 1. "Board" means the public employees retirement system board.
- 27 2. "Deferred member" means ~~a person~~ an individual who elected to receive deferred
28 vested retirement benefits under chapter 54-52.
- 29 3. "Eligible employee", for employees who become participating members after
30 December 31, 2024, has the same meaning as provided under section 54-52-02.15.
31 For employees who elected to join the defined contribution retirement plan under this

1 chapter before January 1, 2025, the term includes a permanent state employee,
2 except an employee of the judicial branch or an employee of the board of higher
3 education and state institutions under the jurisdiction of the board of higher education,
4 who is at least eighteen years of age and who is in a position not classified by the
5 North Dakota human resource management services.

6 4. "Employee" means ~~any person~~ an individual employed by the state, whose
7 compensation is paid out of state funds, or funds controlled or administered by the
8 state or paid by the federal government through any of its executive or administrative
9 officials.

10 5. "Employer" means the state of North Dakota, except the highway patrol for members
11 of the retirement plan created under chapter 39-03.1, or a participating political
12 subdivision of the state.

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 4. AMENDMENT.** Section 54-52.6-02.2 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **54-52.6-02.2. Election after December 31, 2024 - Additional employer contribution.**

2 1. As used in this section, "eligible employee" means a permanent state employee of a
3 state entity that as of January 1, 2025, receives budgetary approval from the
4 legislative assembly, who on December 31, 2024, is a participating member of the
5 public employees retirement system main system plan under chapter ~~54-42~~54-52, who
6 has been a participating member under chapter 54-52 for no more than five years, and
7 who is at least eighteen years of age.

8 2. The board shall provide a three-month election period, from January 1, 2025, through
9 March 31, 2025, for an eligible employee to transfer to the defined contribution plan
10 under this chapter pursuant to the rules and policies adopted by the board.

11 a. An election under this section made by a member of the public employees
12 retirement system under chapter 54-52 to transfer to the defined contribution
13 retirement plan under this chapter is irrevocable.

14 b. For an eligible employee who elects to transfer from the public employees
15 retirement system under chapter 54-52 to the defined contribution retirement plan
16 under this chapter, the board shall transfer a lump sum amount from the public
17 employees retirement system fund to the member's account in the defined
18 contribution retirement plan under this chapter. However, if the eligible employee
19 terminates employment before receiving the lump sum transfer under this
20 section, the election made is ineffective and the eligible employee remains a
21 member of the public employees retirement system under chapter 54-52 and
22 retains all the rights and privileges under that chapter.

23 c. The board shall calculate the lump sum amount to be transferred based on the
24 actuarial present value of the eligible employee's accumulated benefit obligation
25 under the public employees retirement system based on the assumption the
26 eligible employee will retire under the earlier applicable normal retirement age,
27 plus interest from January 1, 2025, to the date of transfer, at the rate of one-half
28 of one percent less than the actuarial interest assumption at the time of the
29 election.

30 d. This section does not affect an eligible individual's right to health benefits under
31 chapter 54-52.1.

1 3. The state employer of an eligible employee who elects under this section to participate
2 in the defined contribution retirement plan under this chapter shall pay an additional
3 annual contribution of three thousand three hundred and thirty-three dollars for up to
4 three years. Under this subsection, the employer shall pay the additional contribution
5 each year the eligible employee continues permanent employment with the state,
6 beginning January 2026, and extending no further than January 2028.

7 4. If the board receives notification from the internal revenue service that this section or
8 any portion of this section will cause the public employees retirement system or the
9 retirement plan established under this chapter to be disqualified for tax purposes
10 under the Internal Revenue Code, that portion that will cause the disqualification does
11 not apply.

12 **SECTION 5. AMENDMENT.** Section 54-52.6-05 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **54-52.6-05. Direction of investments.**

15 1. Each participating member shall direct the investment of the individual's accumulated
16 employer and employee contributions and earnings to one or more investment choices
17 within available categories of investment provided by the board.

18 2. The board shall provide an investment menu of investment options. In establishing the
19 investment options, the board shall:

20 a. Include predetermined investment portfolio options constructed to reflect different
21 risk profiles that automatically reallocate and rebalance contributions as a
22 participating member ages.

23 b. Allow a participating member to construct an investment portfolio using some or
24 all of the investment options.

25 3. The board shall provide a diversified menu of ~~mutual funds~~ investment solutions and
26 ~~in-plan~~ lifetime annuity options that may include in-plan and out-of-plan options, either
27 fixed, variable, or a combination of both. In selecting an annuity provider the board
28 shall comply with section 54-52.6-05.1.

29 **SECTION 6. AMENDMENT.** Section 54-52.6-09.5 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **54-52.6-09.5. Employer contribution for defined benefit plan. (Effective after**
2 **December 31, 2025)**

3 In addition to the employer contribution under section 54-52.6-09, a state employer that
4 receives budgetary approval from the legislative assembly shall contribute to the defined benefit
5 retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under
6 section 54-52-06 less the amount of the required employer contribution under sections
7 54-52.2-09 and 54-52.6-09. If a state employer uses federal funds to pay any or all of an
8 employee's wages, the employer shall use state funds to pay this additional contribution.

9 **SECTION 7. RETROACTIVE APPLICATION.** Section 4 of this Act applies retroactively to
10 January 1, 2025.

11 **SECTION 8. EMERGENCY.** Section 4 of this Act is declared to be an emergency measure.