

2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1112

2025 HOUSE STANDING COMMITTEE MINUTES

GOVERNMENT VETERANS AFFAIRS COMMITTEE

PIONEER ROOM, STATE CAPITOL

HB 1112

1/9/2025

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| Relating to membership of the public employees retirement system |
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9:55 a.m. Chairman Schauer called the meeting to order.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Firefighter definition
- Firefighter retirement plan benefits

9:55 a.m. Derrick Hohbein, Chief Operating Officer of the NDPERS testified in favor of and submitted testimony #28093.

10:03 a.m. Thomas Claeys, State Forester testified in favor of and submitted testimony #28122.

10:09 a.m. Ryan Melin, Fire Management Officer testified in favor of and submitted testimony #28327.

10:20 a.m. Robert Knuth, NDFA training director, testified in favor of and submitted testimony #28328.

10:22 a.m. Jeff Thompson, Dickinson Rural Fire Chief, testified in favor of and submitted testimony #28297.

10:24 a.m. Rebecca Fricke, Executive Director of NDPERS testified in favor of.

10:24 a.m. Chairman Schauer closed hearing.

Additional written testimony:

Rick Schock, #28249

Kyle Schockley, #28273

Darren Schmike, #28277

10:31 Chairman Schauer adjourned the meeting.

Jackson Toman, Committee Clerk

TESTIMONY OF DERRICK HOHBEIN

House Bill 1112 – Revises Definition of Firefighters

Good Morning, Mr. Chairman and members of the committee. My name is Derrick Hohbein and I am the Chief Operating/Financial Officer of the North Dakota Public Employees Retirement System, or NDPERS. I appreciate the committee taking the time to analyze House Bill 1112, which revises the definition of a firefighter. I am here today on behalf of the NDPERS Board to provide information in a neutral capacity so the policy makers are able to make an informed decision regarding the bill.

House Bill 1112 expands the definition of “firefighter” for Public Safety Plan eligibility to include “state” firefighters, and makes them eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85. Political subdivision firefighters are already eligible for the Public Safety Plans, so this bill is trying to make the eligibility for the Public Safety Plans consistent throughout the state.

Our actuary estimates that the bill would move approximately 4 individuals from the Main Plan into the State Public Safety Plan resulting in an actuarial gain to the Main System of \$39,000 and an actuarial loss to the State Public Safety System of \$71,000. The actuary determined that there would be an immaterial impact to the Actuarially Determined Employer Contribution being charged to employers, which is why a fiscal note is not included for your reference on this bill.

Our federal tax consultant has confirmed this bill will not disqualify our retirement plans from an IRS perspective. The expanded eligibility will include participants who satisfy the definition of a “qualified public safety officer,” meaning no 10% early distribution penalty would exist for benefits where the normal retirement benefit is achieved.

House Bill 1112 was a bill introduced during the interim, with the analysis provided to the Employee Benefits Programs Committee, which gave the bill a favorable recommendation. The consultant and legal analysis provided to the committee is included as an attachment to the end of my testimony (please note this was draft bill 115 during the interim session).

Another observation our office has is this bill touches the same sections of code as other bills being introduced during the Session. It is imperative that whatever bill is passed last has language from previously passed bill(s) incorporated in the final passage if these remain stand-alone bills throughout the session.

Mr. Chairman, I appreciate the committee taking the time to learn more about the impact this bill will have to our state. We have also included the analysis from our actuary, as well as our Federal Tax Consultant at the end of our testimony.

This concludes my testimony, and I'd be happy to answer any questions the committee may have.



June 7, 2024

Representative Austen Schauer, Chair
Legislative Employee Benefits Programs Committee
North Dakota State Government

Re: North Dakota Public Employees Retirement System Legislative Studies

Dear Representative Schauer:

In accordance with your request, we have analyzed the impact of Bill No. 25.0115.01000 on the North Dakota Public Employees Retirement System (NDPERS). Our review is actuarial in nature; we are not attorneys and cannot provide legal advice.

Systems Affected

North Dakota Public Employees Retirement System (Main System and Public Safety with prior Main System service)

Summary

Bill No. 25.0115.01000 allows firefighters that are employed by the state, but not in a Public Safety plan at this time, to receive the same benefits as members of the State Public Safety Employees group of the Public Safety with prior Main System service retirement system.

Actuarial Impact of Bill 115 on NDPERS

NDPERS provided data for firefighters employed by the State of North Dakota, as defined in Bill 115. The data was reviewed and compared to data from the July 1, 2023 actuarial valuation. Members that were found to be in the July 1, 2023 actuarial valuation were assumed to transfer from their current group to the State Public Safety Employees group. Members that were not found to be part of the July 1, 2023 actuarial valuation data were excluded from the actuarial analysis.

The data provided included 6 members. It was determined that 1 of those records already participates in a Public Safety Plan. An additional 1 member was found to not be in the July 1, 2023 actuarial valuation data. The remaining 4 members transferring to the State Public Safety Employees group are currently in the Main System.

The actuarial impact of this change will depend specifically on the number and age of new members who would enter the Public Safety Plan, and the amount of liabilities and assets (if any) that would be transferred into the Public Safety Plan.

The following comments are general in nature:

- Eligible firefighters who currently participate in NDPERS in the Main System would have a normal cost plus an amortization payment of the increase in past service liability as a result of the transfer. The normal cost impact would be similar to the normal cost impact described for political subdivisions transferring from outside of NDPERS. It is assumed that the Main System past service liability would be transferred to the Public Safety with prior Main System service System in the form of an asset transfer equal to the value of service accrued under the Main System and the funded ratio under the Main System (about 66% as of July 1, 2023).
 - The following information is based on the results from the actuarial valuation as of July 1, 2023, for the Public Safety with prior Main System service System
 - Board approved employer contribution rate of 9.81% of pay (11.40% effective January 1, 2024)
 - For the State Public Safety Employees group, the employer contribution rate is 12.75% of pay effective August 1, 2023 and 14.34% of pay effective January 1, 2024
 - Employer normal cost rate (including administrative expenses) of 13.56% of pay
 - Average age of active employees of 36.7
 - Average benefit service of active members of 6.9 years
 - Normal retirement eligibility conditions of age 65 or Rule of 85 in the Main System (age 65 or age 60 with Rule of 90 for Main System members enrolled after December 31, 2015) and age 55 with three years of service or Rule of 85 in the Public Safety System
 - Early retirement eligibility conditions of age 55 with three years of service in the Main System and age 50 with three years of service in the Public Safety System
 - Because the Public Safety with prior Main System service System contains more favorable retirement provisions than the Main System, there would be an increase in past service liability as a result of the transfer. Therefore, the net impact of the transfer is expected to result in an increase in unfunded actuarial accrued liability to the Public Safety System due to an asset transfer that is about 66% of the actuarial accrued liability under the Main System and a higher actuarial accrued liability under the Public Safety with prior Main System service System.

- If the transferring group has a total rate (employer normal cost plus amortization of their unfunded liability) that is lower than the Board approved employer contribution rate (current 14.34% of pay), there will be a positive impact to the System.
- If the transferring group has a total rate (employer normal cost plus amortization of their unfunded liability) that is higher than the Board approved employer contribution rate (current 14.34% of pay), there will be a negative impact to the System.

The cost impact calculated in this letter is based on the data for the Public Safety with Prior Main System Service system as of the July 1, 2023 actuarial valuation and additional data provided by PERS. Under the baseline scenario, the total number of active members in the Public Safety with Prior Main System Service system is 1,225, including 181 currently in the State Public Safety Employees group. Under the alternate scenario, the total number of active members in the Public Safety with Prior Main System Service system is 1,229, including 185 in the State Public Safety Employees group. It is assumed that members would transfer all service to the State Public Safety Employees group and that there would be a corresponding asset transfer (described on page 2). The number of active members in the Main System is reduced by 4 members. Potential State Public Safety Employees members provided by PERS that were not in the data for the July 1, 2023 actuarial valuation were excluded from the actuarial analysis.

| Scenario | Baseline July 1, 2023 Valuation | Bill 25.0115.01000 | Difference |
|--|------------------------------------|--------------------|--------------|
| Main System Actuarial Accrued Liabilities | \$ 5,559,270,755 | \$ 5,559,158,225 | \$ (112,530) |
| Main System Actuarial Value of Assets | \$ 3,683,545,963 | \$ 3,683,472,464 | \$ (73,499) |
| Main System Normal Cost | \$ 152,758,636 | \$ 152,734,542 | \$ (24,094) |
| Main System Funded Ratio | 66.26% | 66.26% | 0.00% |
| Public Safety With Prior Main System Service Actuarial Accrued Liabilities | \$ 187,025,504 | \$ 187,169,935 | \$ 144,431 |
| Public Safety With Prior Main System Service Actuarial Value of Assets | \$ 128,273,097 | \$ 128,346,596 | \$ 73,499 |
| Public Safety With Prior Main System Service Normal Cost | \$ 12,179,130 | \$ 12,212,474 | \$ 33,344 |
| Public Safety With Prior Main System Service Funded Ratio | 68.59% | 68.57% | -0.02% |

Actuarial Impact of Bill 115 on State Public Safety Employees Actuarially Determined Contribution (ADC)

A separate ADC is not calculated for State Public Safety Employees members because the plan's assets are not allocated to any subgroups. State Public Safety Employees members contribute 6.0% of payroll, as compared to 5.5% for other Public Safety With Prior Service Plan members. State Public Safety Employees members also have a higher normal cost (NC) rate, due solely to demographic differences and the difference in member contributions. Our understanding is that statutes require employers of State Public Safety Employees members to contribute an amount determined by the board to be actuarially required to support the level of benefits.

The total NC rate for the plan including the administrative expense assumption (before any legislative changes) as of July 1, 2023 was 13.56% of pay. This is comprised of 12.97% of pay for the Public Safety group, 20.98% for the BCI group, and for State Public Safety Employees members, the total NC rate as of July 1, 2023 was 13.90% of pay, or 0.34% of pay higher than the group total. The additional member contribution of .50% for State Public Safety Employees members covers this extra cost.

As of July 1, 2023, the total Normal Cost of the State Public Safety Employees group initially decreases from 13.90% to 13.89% of projected compensation, due to the expansion of the group.

Bill 115 also increases the unfunded liability of the plan, which leads to an increase in the amortized unfunded liability portion of the ADC as of July 1, 2023. However, the covered payroll of the group is also expected to increase. The amortized unfunded liability portion of the ADC as a percentage of payroll decreased from 4.34% to 4.33%.



Policy Issue Analysis

Benefits Policy Issues

- Adequacy of Retirement Benefits

The Public Safety System contains more favorable retirement provisions than the Main System. Therefore, Bill 115 will enhance retirement benefits for firefighters employed by the state, because they will now be able to retire at an earlier age.

- Competitiveness

The Bill may increase the benefits competitiveness for firefighters who transfer into the Public Safety System.

- Benefits Equity and Group Integrity

Under the Bill, firefighters would retire under normal and early retirement dates that are similar to the retirement dates of their peers.

- Purchasing Power

No impact.

- Preservation of Benefits

No impact.

- Portability

No impact.

- Ancillary Benefits

No impact.

- Social Security

No impact.



Funding Policy Issues

- Actuarial Impacts

Previously noted.

- Investment Impacts

- Cash Flow: An asset transfer would increase initial cash flow to the Public Safety System, but decrease cash flows to the Main System.

Administration Issues

- Implementation Issues

The Bill will require that the System reprogram the prior service of firefighters to be counted under the rules applicable to firefighters. While this Bill would have minimal impact on administrative costs of the System, it would have an effect on the participating employer since the required contributions would increase.

- Administrative Costs

The Bill will have a minimal effect on administrative resources. However, employer contributions will increase from transfers from the Main System, since the statutory employer contribution rate for those transferring will increase from 8.12% (9.26% of pay for members enrolled on or after January 1, 2020) of salary to 14.34% under the Public Safety with prior Main service System (for the State Public Safety Employees group).

- 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 Bill will require employee communications to the firefighters to describe the new retirement rules applicable to them, including the normal retirement age and early retirement age.



Summary

- Firefighters that enter the Public Safety with prior Main System service System would be subject to the same eligibility conditions to receive benefits as Public Safety personnel.
- Firefighters that enter the Public Safety with prior Main System service System would be subject to the same benefit provisions as Public Safety personnel, and a 6.00% employee contribution rate.

Disclosures and Additional Information

This analysis is based on projections of the actuarial valuation results for the North Dakota Public Employees Retirement System (NDPERS). The actuarial assumptions used in this analysis are the same assumptions used in the actuarial valuation as of July 1, 2023, including a discount rate of 6.50%.

Future actuarial measurements may differ significantly from the current measurements presented in this cost analysis, due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; and changes in plan provisions, contribution amounts or applicable law.

If any of the provisions, underlying data or assumptions used in this analysis appear to be incorrect or unreasonable, please let us know as soon as possible so we can update the analysis.

This report was prepared using our proprietary valuation model and related software which, in our professional judgment, has the capability to provide results that are consistent with the purposes of the valuation, and has no material limitations or known weaknesses. We performed tests to ensure that the model reasonably represents that which is intended to be modeled.

We have reviewed the bill and provided an actuarial impact analysis as well as a policy issue analysis from our perspective as actuaries. However, the policy issue analysis should not be considered to be comprehensive and there may be additional benefits policy, administration issues or legal issues that are not discussed in this letter.

The signing actuaries are independent of the North Dakota Public Employees Retirement System.

Bonita J. Wurst and Abra D. Hill are Members of the American Academy of Actuaries (MAAA) and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein.



Representative Austen Schauer, Chair
Legislative Employee Benefits Programs Committee
June 7, 2024
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Please let us know if you have any questions or would like to discuss the results of this analysis further.

Sincerely,
Gabriel, Roeder, Smith & Company



Bonita J. Wurst, ASA, EA, MAAA, FCA
Senior Consultant



Abra D. Hill, ASA, MAAA, FCA
Consultant

cc: Rebecca Fricke, NDPERS
Joshua Murner, GRS



MEMORANDUM

TO: Derrick Hohbein, North Dakota Public Employees Retirement System

FROM: Audra Ferguson and Robert Gauss
ICE MILLER LLP

DATE: May 10, 2024

RE: Proposed Public Safety Legislation

This Memorandum is provided in confidence and subject to the attorney-client privilege. We have not provided copies to anyone other than the individual named above. To preserve the attorney-client privilege, you should disclose the contents of this Memorandum only to persons making decisions on the matters discussed herein.

Please allow this Memorandum to follow-up to your electronic mail message dated May 1, 2024. In particular, we have reviewed the following draft Bills:

- Bill No. 25.0115.01000 – Expanding the definition of “firefighter” in the Public Safety Plan to include those members employed by the State as a firefighter. A firefighter employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85.
- Bill Nos. 25.0045.01000 and 25.0041.01000– Including dispatchers, emergency medical personnel, and correctional officers employed by the State in the Public Safety Plan. Under these Bills, dispatchers, emergency medical personnel, and correctional officers employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85.
- Bill No. 25.0040.01000 – Including correctional officers employed by the State in the Public Safety Plan. Under this Bill, correctional officers employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85. [Note: Correctional officers employed by political subdivisions were already included in the Public Safety Plan.]
- Bill No. 25.0134.01000 – Defining “correctional officers” for purposes of the Public Safety Plan to include those individuals employed by a correctional facility who are enrolled in but not yet completed a correctional officer course.

This Memorandum highlights the federal law consideration and various definitions of a “public safety officer” and the impact on the plan qualification and member taxation. Specifically, this Memorandum considers the following federal law Internal Revenue Code (“Code”) sections and requirements:

- Code Section 72(t)(10)(B),
- Normal Retirement Age;
- Code Section 415(b), and
- Code Section 101(h).

I. CODE SECTION 72(t)(10)(B)

A. Relevant Federal Law

Internal Revenue Code (“Code”) section 72(t) imposes an additional 10% premature distribution tax on certain distributions that are paid to members from qualified plans. There are several exceptions to the premature distribution tax, including an exception for a "qualified public safety employee" in a governmental defined benefit plan who receives a distribution after separation from service after attainment of the earlier of age 50 or 25 years of service under the plan.¹ According to Code section 72(t)(10)(B), a "qualified public safety employee" is limited to the following:

- any employee of a State or political subdivision of a State who provides police protection, firefighting services, emergency medical services, services as a corrections officer or a forensic security employee providing for the care, custody, and control of forensic patients for any area within the jurisdiction of such State or political subdivision;
- any Federal law enforcement officer described in section 8331(2) or 8401(17) of title 5, United States Code;
- any Federal firefighter described in section 8331(21) or 8401(14) of such title;
- any air traffic controller described in 8331(30) or 8401(35) of such title;
- any nuclear materials courier described in section 8331(27) or 8401(33) of such title;
- any member of the United States Capitol Police;
- any member of the Supreme Court Police; and
- any diplomatic security special agency of the Department of State.

B. Analysis

¹ There is a separate exception for distributions paid to general employees after separation from service after attainment of age 55.

Correctional Officers, Emergency Medical Personnel, and Firefighters. Correctional Officers, Emergency Medical Personnel, and Firefighters clearly meet the definition of “Qualified Public Safety Officers” under Code Section 72(t)(10)(B).

Dispatchers. Dispatchers do not satisfy the Code section 72(t)(10)(B) definition of a “Qualified Public Safety Officer” because they do not directly provide police protection, firefighting services, or emergency medical services. As a result, a dispatcher could be eligible for early retirement benefits under the plan, but subject to an early distribution tax penalty if the member commenced a monthly benefit prior to age 55.

With respect to Bill No. 25.0134.01000 which expands the definition of “Correctional Officer” to include individuals who are employed by a correctional facility and who are enrolled in but have not yet completed a correctional officer course, this will be a facts and circumstances determination. If the individuals are in a correctional officer role and performing as a correctional officer, then we think the members would satisfy the definition of a “Qualified Public Safety Officer.” However, if the individuals are employed with a correctional facility, but not serving as a correctional officer until the individual has completed the correctional officer course, then the individual would not qualify as a “Qualified Public Safety Officer.” As noted above, the member could receive a benefit; however, if the member commences a monthly benefit prior to age 55, then the member will be subject to an early distribution penalty.

II. NORMAL RETIREMENT AGE

A. Retirement Age Under the Plan

Pursuant to N.D.C.C. § 54-52-17, the normal retirement age for members of the **Public Safety Plan** is as follows:

- The member is at least age 55 with 3 years of service; or
- The member has a combined total years of service credit and years of age equal 85.

By contrast, **under the Main Plan**, the normal retirement age for members is as follows:

- The member is at least age 65; or
- The member has a combined total years of service credit and years of age equal 85.

N.D.C.C. § 54-52-17.

Additionally, a member of the Public Safety Plan may receive an early retirement benefit when the member attains age 50 with 3 years of service. *Id.*

B. Pending Normal Retirement Age Regulations for Governmental Plans

On January 27, 2016, the IRS and Treasury Department issued a Notice of Proposed Rulemaking regarding proposed regulations regarding normal retirement age for governmental pension plans ("Proposed Regulations"). The Proposed Regulations have been long awaited as, in 2007, the IRS issued final regulations defining normal retirement age which are applicable to private sector pension plans. The Proposed Regulations distinguish between governmental plans which allow in-service distributions and those which do not. For governmental plans that do allow in-service distributions, the NRA must meet a "reasonably representative" requirement, which can be satisfied by using any of several safe harbor NRAs set forth in the proposed regulations.

For governmental plans that do not allow in-service distributions, the proposed regulations provide that the NRA must still meet the pre-ERISA vesting rules. In this regard, use of a period of service to determine normal retirement age under a governmental plan would be permissible if the period of service used is reasonable and uniformly applicable and the other pre-ERISA rules related to normal retirement age are satisfied. One of the pre-ERISA rules allows a governmental plan to specify a normal retirement age that is lower than age 65 **if that age represents the age at which employees customarily retire in the industry**.

As part of the Proposed Regulations, several sets of safe harbors were announced. For instance, the Proposed Regulations establish a general safe harbor for a normal retirement age that is at least age 62 or the later of age 62 or another specified date (such as the fifth anniversary of plan participation); this is referred to as the general safe harbor.² The Proposed Regulations also developed the following additional safe harbors specific to governmental plans:

- age 60 with five years of service;
- age 55 with ten years of service;
- a combined age and years of service of 80 or more; and
- any age with 25 years of service (in combination with a safe harbor that includes an age).

Additionally, the Proposed Regulations established separate safe harbor rules for qualified public safety employees. For qualified public safety employees, the proposed safe harbors are:

- age 50;
- combined age and years of service of 70 or more;
- any age with 20 years of service.

² It is important to note that subsequent to the Proposed Regulations, the SECURE Act reduced the age for in-service distributions under Code Section 401(a)(36) from 62 to 59 ½. As a result, it is likely the IRS will revise the general safe harbor to age 59 ½.

Importantly for purposes of the Bills, the term qualified public safety employee is defined by reference to Code § 72(t)(10)(B).

It is important to note that, under the Proposed Regulations, a plan may have more than one normal retirement age. For instance, a plan may have one normal retirement age for one classification of employees and one or more normal retirement ages for one or more different classifications of employees. This is permissible so long as each normal retirement age satisfies the pre-ERISA requirements.

Finally, the Proposed Regulations establish that a normal retirement age which does not satisfy any of the governmental plan safe harbors could still satisfy the reasonably representative requirement based on all of the relevant facts and circumstances. The normal retirement age must be evaluated and shown to satisfy a good faith determination of the typical retirement age for the industry in which the covered work force is employed and that the normal retirement age is otherwise consistent with the pre-ERISA vesting requirements.

While the IRS has stated its intent to issue final regulations, the Proposed Regulations remain pending. Separately, it is important to note that the Proposed Regulations state they are anticipated to be effective for employees hired after the effective date of the final regulations. In the meantime, governmental plan sponsors may rely on the Proposed Regulations prior to the effective date and pending the issuance of final regulations.

C. Analysis

Correctional Officers,³ Emergency Medical Personnel, and Firefighters. The normal retirement age under the Public Safety Plan satisfies the Safe Harbor for Qualified Public Safety Employees. As noted above, Correctional Officers, Emergency Medical Personnel, and Firefighters clearly meet the definition of “Qualified Public Safety Officers” under Code section 72(t)(10)(B). Thus, the lower normal retirement age proposed under the Bills for these job classifications does not raise a concern under federal law.

Dispatcher. As noted above, a Dispatcher does not satisfy the definition of a “Qualified Public Safety Officer.” Thus, NDPERS cannot rely on the Normal Retirement Age Safe Harbor for Qualified Public Safety Officers. However, the above IRS guidance is clear that, while a governmental plan that does not provide in-service distributions has flexibility in establishing a Normal Retirement Age, the parameters are not unlimited. Specifically, the Normal Retirement Age must satisfy the pre-ERISA vesting rules.

The pre-ERISA vesting rules provided that

³ As noted above, with respect to Bill No. 25.0134.01000 which expands the definition of “Correctional Officer” to include individuals who are employed by a correctional facility and who are enrolled in but have not yet completed a correctional officer course, this will be a facts and circumstances determination. If the individual is serving as a correctional officer with a job classification of a Correctional Officer, then the individual satisfies the definition of a “Qualified Public Safety Officer” under Code section 72(t)(10)(B).

[A]lthough normal retirement age under a pension or annuity plan is ordinarily age 65, a plan may specify a lower age at which the employee has the right to retire without the consent of the employer and to receive retirement benefits based on the amount of the employee's service at the full rate set forth in the plan if this lower age would be an age at which employees customarily retire in the particular company or industry, and if the provision permitting receipt of unreduced benefits at this age is not a device to accelerate funding.

Preamble to the Proposed Regulations Regarding Normal Retirement Age (Jan. 27, 2016). Thus, NDPERS will need to establish that age 55 with 3 years of service represents an age at which Dispatchers customarily retire. Note: The combined age and years of service of 85 satisfies the General Employee Normal Retirement Age Safe Harbor.

III. CODE SECTION 415(b) DEFINITION OF "QUALIFIED PARTICIPANTS"

A. Relevant Federal Law

Code section 415(b) provides that the annual benefit in the form of a single life annuity for a plan participant who is between the ages of 62 and 65 may not exceed \$160,000, as adjusted for inflation in \$5,000 increments (for 2024, the limit is \$275,000). However, there is no age-based actuarial reduction required for benefits beginning prior to age 62 for "qualified participants." Here, the Code defines "qualified participants" as those who (1) are participants of a defined benefit of a State or political subdivision of a State; and (2) have completed at least 15 years of service as a full-time employee of any police department or fire department which is organized and operated by the State or political subdivision to provide police protection, firefighting services, or emergency medical services, or as a member of the U.S. Armed Forces.

Importantly, the scope of the 415(b) public safety exception varies from the definition of public safety employees in Code section 72(t)(10)(B). Under Code section 415(b), the application of the rule depends on whether the employer is a police department or fire department of the state or political subdivision, rather than on the job classification of the individual participant. As a result, the definition of "qualified participant" under Code section 415(b) is more inclusive in terms of the types of employees that are covered than many public safety provisions, but less inclusive in terms of the types of employers that are covered.

Generally, the 415(b) exception is very beneficial to public safety officers and to other employees of police and fire departments, including non-public safety personnel. However, this definition does not cover all public safety employees. The examples in the Final 415 Regulations make it clear that an employee of a police division of an agency may be a qualified participant, but that an ambulance driver who works for an emergency medical services agency rather than for a police or fire department cannot. While the name of the agency is not important, it is necessary that the employer (or at least the appropriate division of employer) function as a police or fire department. For example, correctional officers will not be treated as employees of a police department for purposes of Code 415(b), as decided in PLR 201347028.

B. Analysis

NDPERS should be aware that only those Public Safety Plan participants that satisfy the definition of “qualified participants” will be eligible for the unreduced Code section 415(b) limit. This will include the Firefighter members, but it will not include Correctional Officers or Medical Services Personnel. In addition, Dispatchers will be considered “qualified participants” only if they are employees of a police or fire department. As a result, NDPERS would have to make sure its systems are programmed to recognize that not all employees in the Public Safety Plan would be eligible for the unreduced Code Section 415(b) limit.

IV. CODE SECTION 101(h) – DEFINITION OF PUBLIC SAFETY OFFICER

A. Relevant Federal Law

Code section 101(h) provides a federal income tax exclusion for certain amounts paid as a survivor annuity on account of the death of a "public safety officer" killed in the line-of-duty. The exclusion applies:

- if the survivor annuity is provided by a qualified 401(a) plan to the spouse, former spouse, or a child of the officer; and
- to the extent the annuity is attributable to the officer's service as a public safety officer.

In accordance with 42 U.S.C. 3796b(9) (the Omnibus Crime Control and Safe Streets Act of 1968), a "public safety officer" includes (i) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or an ambulance crew; or (ii) with some limitation, an employee of a State, local or tribal emergency management or civil defense agency who is performing official duties in cooperation with the Federal Emergency Management Agency.

B. Analysis

NDPERS should be aware that only those Public Safety Plan survivors of participants that satisfy the definition of “public safety officers” will be eligible for the tax-free annuity under Code section 101(h). This will include the Firefighter members and Medical Services Personnel, but it will not include Correctional Officers. In addition, unless Dispatchers are considered law enforcement officers, firefighters, part of a rescue squad or part of an ambulance crew, they would only be included in this definition of a public safety officer for purposes of Code section 101(h) if they fall into the second category of working in cooperation with the Federal Emergency Management Agency.

V. SUMMARY OF BILL ANALYSIS

| <u>Bill No.</u> | <u>Code § 72(t)</u> | <u>NRA</u> | <u>Code § 415(b) Reduction</u> | <u>Code § 101(h)</u> |
|---|---|---|--|---|
| 25.0115.01000 Adding Firefighters employed by the State | <ul style="list-style-type: none"> • Satisfies the definition of a “qualified public safety officer” • No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service” | <ul style="list-style-type: none"> • Satisfies the definition of a “qualified public safety officer” • Satisfies the NRA Safe Harbor for Qualified Public Safety Officer” | <ul style="list-style-type: none"> • Satisfies the definition of “qualified participants” and eligible for the unreduced Code section 415(b) limit. | <ul style="list-style-type: none"> • Satisfies the definition of “public safety officers” and the survivor will be eligible for the tax-free annuity under Code Section 101(h). |
| 25.0134.01000 Amending definition of a “correctional officer” to include an individual employed by a correctional facility who is enrolled in but not yet completed a correctional | <ul style="list-style-type: none"> • If the individuals are in a correctional officer role and performing as a correctional officer, then we think the members would satisfy the | <ul style="list-style-type: none"> • Same | <ul style="list-style-type: none"> • Do not satisfy the definition of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit. | <ul style="list-style-type: none"> • Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h). |

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| officer course. | definition of a “Qualified Public Safety Officer.” However, if the individuals are employed with a correctional facility but not serving as a correctional officer until the individual has completed the correctional officer course, then the individual would not qualify as a “Qualified Public Safety Officer.” | | | |
| 25.0045.01000 and 25.0041.01000 Amends the Public Safety Plan to include Dispatchers, Medical | <u>Correctional Officers and Medical Service Personnel</u> • Satisfies the definition | <u>Correctional Officers and Medical Service Personnel</u> • Satisfies the definition of a | <u>Correctional Officers and Medical Services Personnel</u> • Do not satisfy the definition | <u>Correctional Officers</u> • Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity |

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| Service Personnel and State Correctional Officers. | <p>of a “qualified public safety officer”</p> <ul style="list-style-type: none"> No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Does not satisfy the definition of a “qualified public safety officer” Will be subject to a 10% early distribution penalty for monthly benefits commenced before age 55 | <p>“qualified public safety officer”</p> <ul style="list-style-type: none"> Satisfies the NRA Safe Harbor for Qualified Public Safety Officer” <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Do not satisfy the definition of a “qualified public safety officer” Will need to demonstrate that the NRA represents the age at which employees customarily retire in the industry. | <p>of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit.</p> <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Will be considered “qualified participants” only if they are employees of a police or fire department. | <p>under Code Section 101(h).</p> <p><u>Medical Services Personnel</u></p> <ul style="list-style-type: none"> Satisfies the definition of “public safety officers” and the survivor will be eligible for the tax-free annuity under Code Section 101(h). <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h), unless they are considered law enforcement officers, firefighters, part of a rescue squad or part of an ambulance crew. |
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| 25.0040.01000 | | | | |
| Amends the Public Safety Plan to State Correctional Officers. | <ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service | <ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” Satisfies the NRA Safe Harbor for Qualified Public Safety Officer | <ul style="list-style-type: none"> Do not satisfy the definition of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit. | <ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h). |

69TH LEGISLATIVE ASSEMBLY

House Bill 1112 - “Relating to membership of the NDPERS Public Safety Defined Benefit Retirement Plan.”

House Government and Veterans Affairs Committee

January 9, 2025

Testimony Submitted by:

Tom Claey's, State Forester

Purpose:

Chairman Schauer, members of the House Government and Veterans Affairs Committee, my purpose in testifying this morning is to explain the request to include state firefighters in subsection 8 of section 54-52-01, section 54-52-06.4, subsection 3 of section 54-52-17, and subsection 4 of section 54-52-17 of the North Dakota Century Code. Current language does not provide for an opportunity for state firefighters, including North Dakota Forest Service (NDFS) firefighters, to participate in the NDPERS Public Safety Defined Benefit Retirement Plan. This legislation seeks to remove barriers to participation.

Background:

NDFS wildland firefighters help ensure the protection of lives, property and natural resources by training and equipping North Dakota's rural volunteer fire departments. Grant programs provide departments with assistance in training, purchasing or repairing equipment and vehicles. A companion program loans surplus federal equipment to departments for enhancing firefighting capabilities. Most importantly, when conditions deteriorate and local departments exceed their mutual aid capacity, the agency and our designated wildland firefighting staff provide essential firefighting resources during catastrophic wildfire events.

NDFS firefighters work alongside federal, state, tribal and local firefighters in and outside of North Dakota. They are a state and national shared resource, who regularly work for extended periods of time (assignments can last 21 days) while exposed to extremely hazardous environmental conditions. Wildland firefighters are regularly exposed to hazards on the job and during off-hours while sleeping outdoors at incident command posts and at fire camps. Some of these hazards include smoke and silicate inhalation, off-gassing from burning structures/vehicles, and chemicals used during the suppression of wildland fires. It is estimated wildland firefighters with five or more years in service who have spent 50-100 days (annually) exposed to environmental hazards are:

- Up to 43% increased risk of mortality from lung cancer
- Up to 30% increased risk of mortality from cardiovascular disease

Unlike structural firefighters, wildland firefighters do not use self-contained breathing apparatus (SCBA) or wear non-porous personal protective equipment (“turnouts”) while engaged in wildland fire suppression or prescribed burning.

Given the continued increase in intensity and duration of wildfires and the increased proximity to the urban interface and communities, wildland firefighters will continue to be exposed to environmental hazards and harmful chemicals. In 2024, NDFS firefighters worked 10,978 hours on fires.

Wildland firefighting is physically and mentally challenging for those in their 20s, 30s and 40s, it becomes progressively more difficult in their 40s and 50s. Offering earlier retirement opportunities than they currently have ensures that, as a state, we don't place an extraordinarily risk on firefighters in their late 50s and 60s. We recognize that placing an older firefighter on fire ground during a wildland fire emergency to protect individual lives and property, dramatically increases the risk to their own lives.

The draft bill was presented at the Employee Benefits Program Committee on Monday, June 17, 2024, and was given favorable consideration. There were however, some questions and concerns expressed by the committee. I'd like to address some of those concerns.

The number of NDFS firefighters that would potentially transition to the Public Safety Defined Benefit Retirement Plan is seven. The added costs and concerns about overall eligibility for the program was mentioned. Of the seven NDFS firefighters, only one employee's salary and fringe is supported by state appropriated general fund dollars. The other six's salary and fringe are supported by special funds. We are not aware of any additional firefighters from other agencies that would qualify for this benefit.

Another concern was that the agency was, or would be, hiring older employees closer to the Public Safety Defined Benefit Retirement Plan retirement age. Of the seven (7) full-time employees, 3 are in their early-mid 40s and have worked for the agency for a combined 28 years (15, 11, 2). One is in their early 30s and has worked for 8 years. Three are in their 20s and have worked for the agency for a combined 16 years (8,5,3). We are recruiting young firefighters at the beginning of their careers after working as seasonal firefighters for the NDFS. We have been successful during a time where other states and federal agencies have added bonuses and additional incentives to attract firefighters. In the last 5 years, we have also lost @21 firefighters to federal agencies and other western states. These firefighters represent a significant investment in time and money to develop their wildland fire qualifications. The environment the NDFS Fire Management Officer has created is helping us recruit and retain young employees that not only want a career in public service, but want to live in North Dakota.

The agency recognizes that this request changes the overall benefits to state firefighters and that when they were hired, they understood the benefits that they were eligible for. NDSU, and the state of North Dakota, provide an outstanding benefit package for full-time employees and we are very appreciative. This is an opportunity to provide a slightly different benefit package, comparable to what some local firefighters, and others that fall within the definition of public safety, are currently eligible for. It is an opportunity to recognize that, unlike most state employees, law enforcement, firefighters and other specialized positions, put their own lives at risk at work to protect the lives and property of others.

We greatly appreciate the ability to share the background and opportunity to consider including state employed firefighters, into the NDPERS Public Safety Defined Benefit Retirement Plan. There are a number of others that here today to testify and share their perspectives.

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69TH LEGISLATIVE ASSEMBLY**House Bill 1112 - "Relating to membership of the NDPERS Public Safety Defined Benefit Retirement Plan."**

House Government and Veterans Affairs Committee

January 9, 2025

Testimony Submitted by:

Ryan Melin, Fire Management Officer – North Dakota Forest Service

Chairman Schauer, members of the committee, my name is Ryan Melin and I serve as the Fire Management Officer for the North Dakota Forest Service (NDFS). In this role I lead the agency's wildland fire response program. I am extremely fortunate to call myself a firefighter. Every day I get to walk into a fire station and remember the hero's that I looked to up as a kid. I vividly remember my mom dropping me off after my father responded to wail of the town siren and walking into the Mohall Fire Department. The smell of smoke and watching what I believed at the time giants within my small town preparing themselves and their equipment for the next call for service. Many years later I am lucky enough to find myself in their shoes. This career has taken me from a small town in northern North Dakota to assignments across the country, its created friendships that will last a lifetime, I have received honors from Governors and Congressman and women and the fire service has given me opportunity to stand humbly in front of you today. I believe we all have a role in making the world a better place and the fire service has given me that gift. As I speak about the challenges I and others face please understand I hold the fire service profession in the highest regard and I could not imagine myself in another profession.

Chairman Schauer, members of the committee, my purpose for testifying this morning is to further support the request to broaden the definition of firefighter within North Dakota Century Code to include state employed firefighters. As it has been explained the current language does not provide the opportunity for state employed firefighters, to participate in the NDPERS Public Safety Defined Benefit Retirement Plan.

NDFS firefighters help ensure the protection of lives, property and natural resources by responding to fire suppression assistance requests, training and equipping North Dakota's fire departments. NDFS provides support to local fire departments through its cooperative fire agreement which acts similar as a mutual aid agreement or through activation of the state emergency operation plan. As NDFS has increased its capacity through the years local fire departments have looked to NDFS for its expertise in wildland fire. NDFS routinely prepositions firefighters in high fire danger areas and responds to requests across North Dakota.

NDFS firefighters work alongside federal, state, tribal and local firefighters in and outside of North Dakota. We are a state and national shared resource, who regularly work for extended periods of time with national assignments regularly last 21 days not including travel. During these assignments' firefighters are often exposed to extremely hazardous environmental conditions. Wildland firefighters are regularly exposed to hazards on the job and during off-hours while sleeping outdoors at the incident, many times this is right along the fire edge. Some of these hazards include smoke and silicate inhalation, off-gassing from burning structures/vehicles, and chemicals used during the suppression fires. It is estimated wildland

firefighters with five or more years in service who have spent at least 50 days (annually) exposed to environmental hazards are:

- Up to 43% increased risk of mortality from lung cancer
- Up to 30% increased risk of mortality from cardiovascular disease

Given the continued increase in intensity and duration of wildfires and the increased proximity to the urban interface and communities, wildland firefighters will continue to be exposed to environmental hazards and harmful chemicals. In 2024, NDFS firefighters worked 10,978 hours on fire assignments.

Wildland firefighting is difficult for those in their 20s, 30s and 40s, it becomes progressively more difficult in their 40s and 50s and now as I am in my mid 40s I have a front row seat to that. This October fires were a reminder that my fellow colleagues in their 20s have a little bit more in the tank than I do. The cumulative effects of sleep deprivation and arduous work were very evident along with the extended recovery time. It is a hard pill to swallow, but I can honestly tell you that I cannot do at 44 what I could do at 30. Offering earlier retirement opportunities than they currently have ensures that, as a state, we don't place an extraordinarily risk on firefighters in their late 50s and 60s. We recognize that placing an older firefighter on fire ground during a wildland fire emergency to protect individual lives and property, dramatically increases the risk to their own life.

I appreciate the opportunity to share this information with you for your consideration of including state employed firefighters, into the NDPERS Public Safety Defined Benefit Retirement Plan.

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House Government and Veterans Affairs Committee

January 9, 2025

Testimony on House Bill 1112

Submitted by: Robert Knuth, Training Director, North Dakota Firefighter's Association

Chairman Schauer and Members of the House Government and Veterans Affairs Committee:

I appreciate the opportunity to submit testimony in support of the proposed legislation to include state firefighters under subsection 8 of section 54-52-01, section 54-52-06.4, subsection 3 of section 54-52-17, and subsection 4 of section 54-52-17 of the North Dakota Century Code. This legislation is critical as it removes barriers preventing state firefighters, including those with the North Dakota Forest Service (NDFS), from participating in the NDPERS Public Safety Defined Benefit Retirement Plan.

Currently, state firefighters are excluded from this plan, creating inequity in recognizing their vital contributions to public safety. This legislation seeks to correct that oversight and ensure that state-employed firefighters receive the same retirement benefits as other public safety professionals.

The NDFS wildland firefighters are not only front-line responders but also serve as instructors and subject matter experts for the North Dakota Firefighter's Association (NDFA). Their expertise is critical in training rural firefighters, developing certification programs, and preparing local departments to handle the increasing challenges of wildland fires. Their technical knowledge and real-world experience are essential to fulfilling NDFA's mission of equipping North Dakota's fire service for emergencies.

As the Assistant Chief of the Minot Rural Fire Department, I've witnessed the invaluable support provided by NDFS firefighters. In 2008, during a wildland fire sparked by power lines in East Side Estates, extreme drought conditions caused the fire to spread rapidly. Despite mutual aid from over six departments, our resources were overwhelmed. A secondary fire, ignited by a train in Trestle Valley, compounded the crisis. At this critical juncture, we called on the NDFS for assistance. Their response, including equipment and manpower, was pivotal in managing these fires when local capabilities were exceeded.

The October 2024 wildfires underscored the importance of preparedness across the state. Once again, NDFS firefighters demonstrated their readiness and ability to deploy where needed, supporting overburdened local departments.

The North Dakota Firefighter's Association fully supports this legislation. Allowing state-employed firefighters, including those with NDFS, to join the NDPERS Public Safety Defined Benefit Retirement Plan is a step toward recognizing their indispensable role in protecting lives and property across North Dakota.

Thank you for considering this important issue, and I urge the committee to advance this legislation.

Sincerely,



Robert Knuth

Training Director, North Dakota Firefighters Association; and
Assistant Chief, Minot Rural Fire Department

69TH LEGISLATIVE ASSEMBLY**House Bill 1112 - "Relating to membership of the NDPERS Public Safety Defined Benefit Retirement Plan."**

House Government and Veterans Affairs Committee

January 9, 2025

Testimony Submitted by:

Jeff Thompson, Administrative Chief, Dickinson Rural Fire Protection District

Purpose:

Chairman Schauer, members of the House Government and Veterans Affairs Committee, my purpose in submitting this testimony is to support the request to include state firefighters in subsection 8 of section 54-52-01, section 54-52-06.4, subsection 3 of section 54-52-17, and subsection 4 of section 54-52-17 of the North Dakota Century Code. Current language does not provide for an opportunity for state firefighters, including North Dakota Forest Service (NDFS) firefighters, to participate in the NDPERS Public Safety Defined Benefit Retirement Plan. This legislation seeks to remove barriers to participation.

NDFS wildland firefighters are just that firefighters. Firefighters employed by the state, not a district or community. But rest assured they are highly trained and great assets to all fire departments in the state.

NDFS firefighters are not excluded from the dangers of exposures to hazards typical of firefighters employed by a district or community simply because they are employed by the state of North Dakota. The state also has no issues calling on them in a time of need. So, it makes sense that the state includes them in the benefits that will assure they are here when needed.

Firefighting especially wildland firefighting has always been a younger person's occupation due to the toll it takes on the body. That issue is double edged as #1 injury or health concerns force retirement #2 replacements without proper incentives become harder to recruit. Offering eligibility to the NDPERS Public Safety Defined Benefit Retirement Plan goes a long way to addressing those issues.

The fall of 2024 as well as the spring of 2021 showed the entire state fire services that being prepared will be and should be priority #1. We continue to see each wildland fire season be the worst ever seen in our state and the NDFS firefighters where prepared and responded with the professionalism and knowledge to take the task on putting others above themselves. This is a way to help say thanks and ensure they stay in our state.

Simply said offering eligibility to the NDPERS Public Safety Defined Benefit Retirement Plan is simply another tool to help recruit and retain personnel.

Please again take this testimony as support for HB1112 from the Dickinson Rural Fire Protection District.

69TH LEGISLATIVE ASSEMBLY

House Bill 1112 - "Relating to membership of the NDPERS Public Safety Defined Benefit Retirement Plan."

House Government and Veterans Affairs Committee

January 9, 2025

Testimony Submitted by:

Kindred Fire Department, Chief Richard A. Schock

Purpose:

Members of the House Government and Veterans Affairs Committee, my purpose of submitting testimony is to provide a request to include state firefighters in subsection 8 of section 54-52-01, section 54-52-06.4, subsection 3 of section 54-52-17, and subsection 4 of section 54-52-17 of the North Dakota Century code. The current language does not provide for state firefighters, including (NDFS) North Dakota Forest Service firefighters, to participate in the NDPERS Public Safety Defined Benefit Retirement Plan. This legislation seeks to remove barriers to participation.

Background:

As a rural fire department, we have worked alongside the NDFS firefighters' multiple times, we see firsthand when they travel to locations for suppression efforts, they have to take into account that they will be fighting fires with the bare essentials for equipment during extreme wildfire conditions and staying in very primitive accommodations. They are usually a long way from their home station and do not have access to a lot of the equipment and ppe that most even the smallest of departments have access to. The health risks alone should be a primary reason to offer this program to include participation of state firefighters including NDFS firefighters. Wildland fire smoke is a mixture of gases and particles such as carbon monoxide (CO) and respirable particulate matter (PM) that may cause short- and long-term health effects. Wildland firefighters can be exposed to smoke at wildfires and "prescribed" fires (planned and intentionally ignited low-intensity fires). The contents of and exposure to wildfire smoke can vary greatly throughout the day depending on the vegetation type, fire behavior, and meteorological conditions. Research has shown that wildland firefighters have been exposed to gases and particles such as CO and PM above the occupational exposure limits during both wildland and prescribed fires. While burning vegetation is the primary exposure of concern for wildland and prescribed fires, when fires burn in the wildland urban interface (WUI, where wildland vegetation and urban areas meet) the smoke may contain compounds that are more like what structural firefighters encounter.

Wildland firefighters will often suppress these fires and may be exposed to some of the hazardous compounds of WUI smoke such as volatile organic compounds (VOCs), flame retardants, and polycyclic aromatic hydrocarbons (PAHs). However, wildland firefighters do not have the benefit of wearing some of the personal protective equipment (PPE) typically used in a structural response (e.g., self-contained breathing apparatus [SCBA], turnout gear) that could provide protection from these compounds. Additionally, wildland firefighters may be exposed to smoke at firefighting base camps (incident command posts) where they eat and rest while off-duty. These health concerns are just the tip of the iceberg. There are several other health risks they face which are hard to quantify like mental health and other bodily injuries.

The firefighters working for the NDFS have provided our department and surrounding agencies with training that has been paramount to our communities in preservation of life and property. They were in Kindred assisting us with a 300-acre fire when a lot of local agencies were battling fires in their own districts and together, we saved a generational farm with minimal defensible space. I can personally speak to the talent and perseverance endured by each and everyone of them and hope that you will take into consideration the time and effort put in by each and every state employed firefighter and be inclusive to allow participation into the NDPERS Public Safety Defined Benefit Retirement Plan so we can continue to grow as an organization and help provide help in times of need. I would like to thank you all for your time in allowing me to testify to this important measure.



Billings County Rural Fire Protection District
 Po Box 597, Belfield ND, 58622
 Chief Shockley 701-690-0041

January 8, 2025

To: House Government and Veterans Affairs Committee

Subject: HB 1112 and making state employed firefighters eligible for the NDPERS Public Safety Retirement Plan

House Government and Veterans Affairs Committee,

I am writing in support of allowing state employed firefighters to be eligible for the NDPERS Public Safety Defined Benefit Retirement plan. I am a lifelong resident of ND and I have been a firefighter for 25 years, both Volunteer and Career. Out of those 25 years I have been a Fire Chief for 17 of those years.

Through my years of service, I have seen the NDFS provide an excellent service to the fire departments across the state. They provide substantial assistance when it comes to helping fire departments secure funding and equipment through their grants that they obtain and disburse to the ND fire departments.

They have brought training to a new level by obtaining the fire simulation table. With this, they can simulate fires that firefighters can watch live and interact with, as well as simulate an actual response to wildland fires. This not only provides excellent training to the fire departments but it also greatly improves life/safety for all firefighters. With this simulation table the NDFS is not shy about taking the table around the state to other fire departments to share this very important training.

The NDFS has also responded to several incidents to assist the Billings County Rural Fire Protection District and myself countless time. Their response has been exceptional both with helping provide man power and helping with state resources such as the National Guard Black Hawks. While I was Incident commander when the Medora Fire of April 1, 2021, broke out, they were in contact with myself immediately and started providing assistance. They are always ready to work with the locals and assist in anyway.

I was not aware that the NDFS was not included with other firefighters in the NDPERS Public Safety Retirement Plan and this is very disheartening to me. I have seen first hand on what they encounter on their responses, and that they encounter the same types of fires and environments that any other firefighter encounters that is included under this plan.

Fire fighter retention and recruiting is defiantly a challenge in ND. Adding state employed firefighters to this retirement plan will help in both retention and recruitment to the NDFS. This would assure that they can continue to retain and hire the best individuals so they can continue to provide a very important service to the state of ND and to every fire department in the state.

I fully support this proposal.

Sincerely,

Kyle Shockley

Kyle Shockley, Fire Chief

Billings County Rural Fire Prot. Dist.

Professional Fire Fighters of North Dakota

Darren Schimke, President | 218-779-4122 | dschimke@wiktel.com

1/9/2025

House Government and Veterans Affairs Committee

Re: Support of HB 1112

Chairman Schauer and members of the House Government and Veterans Affairs Committee.

My name is Darren Schimke, President of the Professional Fire Fighters of North Dakota. I represent 420 professional firefighters throughout the State of North Dakota. We appreciate this opportunity to provide testimony in support of HB 1112.

North Dakota Forest Service Firefighters work in some of the most indescribable conditions for long periods of time. During those times, they are exposed to chemicals that are produced from the burning vegetation. These incidences may also include involved buildings and vehicles/farm equipment. Their short time off is spent mostly outdoors in a camp. Their physical conditioning is truly extraordinary.

Additionally, they work alongside professional and volunteer firefighters during fire incidences and assist with mutual aid requests. The NDFS firefighters provide invaluable training to other firefighters.

The toll that this profession has on the human body can be quick and severe. The NDFS firefighters provide public safety and they deserve to be eligible for membership within the NDPERS Public Safety Defined Benefit Retirement Plan.

The PFFND respectfully requests a Do Pass on HB 1112.

Thank you,
Darren Schimke

2025 HOUSE STANDING COMMITTEE MINUTES

GOVERNMENT VETERANS AFFAIRS COMMITTEE

PIONEER ROOM, STATE CAPITOL

HB 1112
1/10/2025

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| Relating to membership of the public employees retirement system |
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11:09 a.m. Chairman Schauer called the meeting to order.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Committee Action

11:12 a.m. Representative VanWinkle moved a Do Pass.

11:12 a.m. Representative Brown seconded the motion.

| Representatives | Vote |
|--------------------------------|------|
| Representative Austen Schauer | Y |
| Representative Bernie Satrom | Y |
| Representative Landon Bahl | Y |
| Representative Collette Brown | Y |
| Representative Josh Christy | Y |
| Representative Karen Grindberg | Y |
| Representative Karen Karls | Y |
| Representative Carrie McLeod | Y |
| Representative Karen Rohr | Y |
| Representative Mary Schneider | Y |
| Representative Vicky Steiner | Y |
| Representative Lori VanWinkle | Y |
| Representative Steve Vetter | Y |
| Representative Christina Wolff | Y |

11:13 a.m. Motion passed 14-0-0.

Representative Karls will carry the bill.

11:13 a.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1112 ([25.0115.02000](#))

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1112 was placed on the Eleventh order on the calendar.

2025 SENATE STATE AND LOCAL GOVERNMENT

HB 1112

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee Room JW216, State Capitol

HB 1112
3/6/2025

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| Relating to membership of the public employees retirement system. |
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9:30 a.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

Discussion Topics:

- Expands definition of firefighter
- No fiscal impact
- Exclusive to firefighters
- State employed

9:30 a.m. Derrick Hohbein, Chief Operating/Financial Officer NDPERS, introduced the bill and submitted neutral testimony #38416.

9:36 a.m. Tom Claeys, State Forester ND Forest Service, testified in favor and submitted testimony #38586.

9:44 a.m. Ryan Melin, Fire Management Officer ND Forest Service, testified in favor and submitted testimony #38969.

9:50 a.m. Kenneth Wangen, President ND Fire Chiefs Association, testified in favor and submitted testimony #38849.

9:52 a.m. Corey Johnson, Assistant Chief City of Williston Fire Department, testified in favor and submitted testimony #38888.

9:57 a.m. Robert Knuth, ND Firefighter's Association and Assistant Chief Minot Fire Department, testified in favor and submitted testimony #39163.

10:00 a.m. Jeff Thompson, Administrative Chief Dickinson Rural Fire Protection District, testified in favor and submitted testimony #39022.

10:02 a.m. Darren Schimke, President Professional Fire Fighters of ND, testified in favor and submitted testimony #38730.

10:05 a.m. Senator Lee moved Do Pass.

10:05 a.m. Senator Braunberger seconded the motion.

| Senators | Vote |
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| Senator Kristin Roers | Y |
| Senator Jose L. Castaneda | Y |
| Senator Jeff Barta | Y |
| Senator Ryan Braunberger | Y |
| Senator Judy Lee | Y |
| Senator Chuck Walen | Y |

Motion Passed 6-0-0

Senator Lee will carry the bill.

Additional written testimony:

Kyle Schockley, Fire Chief Billings County Rural Fire Prot. Dist., submitted testimony in favor #39136.

Richard Schock, Kindred Fire Department, submitted testimony in favor #38846.

10:06 a.m. Chair Roers closed the hearing.

Susan Helbling, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1112 ([25.0115.02000](#))

State and Local Government Committee (Sen. Roers, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). HB 1112 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY OF DERRICK HOHBEIN

House Bill 1112 – Revises Definition of Firefighters

Good Morning, Madam Chairman and members of the committee. My name is Derrick Hohbein and I am the Chief Operating/Financial Officer of the North Dakota Public Employees Retirement System, or NDPERS. I appreciate the committee taking the time to analyze House Bill 1112, which revises the definition of a firefighter. I am here today on behalf of the NDPERS Board to provide information in a neutral capacity so the policy makers are able to make an informed decision regarding the bill.

House Bill 1112 expands the definition of “firefighter” for Public Safety Plan eligibility to include “state” firefighters, and makes them eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85. Political subdivision firefighters are already eligible for the Public Safety Plans, so this bill is trying to make the eligibility for the Public Safety Plans consistent throughout the state.

Our actuary estimates that the bill would move approximately 4 individuals from the Main Plan into the State Public Safety Plan resulting in an actuarial gain to the Main System of \$39,000 and an actuarial loss to the State Public Safety System of \$71,000. The actuary determined that there would be an immaterial impact to the Actuarially Determined Employer Contribution being charged to employers, which is why a fiscal note is not included for your reference on this bill.

Our federal tax consultant has confirmed this bill will not disqualify our retirement plans from an IRS perspective. The expanded eligibility will include participants who satisfy the definition of a “qualified public safety officer,” meaning no 10% early distribution penalty would exist for benefits where the normal retirement benefit is achieved.

House Bill 1112 was a bill introduced during the interim, with the analysis provided to the Employee Benefits Programs Committee, which gave the bill a favorable recommendation. The consultant and legal analysis provided to the committee is included as an attachment to the end of my testimony (please note this was draft bill 115 during the interim session).

Another observation our office has is this bill touches the same sections of code as other bills being introduced during the Session. It is imperative that whatever bill is passed last has language from previously passed bill(s) incorporated in the final passage if these remain stand-alone bills throughout the session.

Madam Chair, I appreciate the committee taking the time to learn more about the impact this bill will have to our state. We have also included the analysis from our actuary, as well as our Federal Tax Consultant at the end of our testimony.

This concludes my testimony, and I'd be happy to answer any questions the committee may have.



June 7, 2024

Representative Austen Schauer, Chair
Legislative Employee Benefits Programs Committee
North Dakota State Government

Re: North Dakota Public Employees Retirement System Legislative Studies

Dear Representative Schauer:

In accordance with your request, we have analyzed the impact of Bill No. 25.0115.01000 on the North Dakota Public Employees Retirement System (NDPERS). Our review is actuarial in nature; we are not attorneys and cannot provide legal advice.

Systems Affected

North Dakota Public Employees Retirement System (Main System and Public Safety with prior Main System service)

Summary

Bill No. 25.0115.01000 allows firefighters that are employed by the state, but not in a Public Safety plan at this time, to receive the same benefits as members of the State Public Safety Employees group of the Public Safety with prior Main System service retirement system.

Actuarial Impact of Bill 115 on NDPERS

NDPERS provided data for firefighters employed by the State of North Dakota, as defined in Bill 115. The data was reviewed and compared to data from the July 1, 2023 actuarial valuation. Members that were found to be in the July 1, 2023 actuarial valuation were assumed to transfer from their current group to the State Public Safety Employees group. Members that were not found to be part of the July 1, 2023 actuarial valuation data were excluded from the actuarial analysis.

The data provided included 6 members. It was determined that 1 of those records already participates in a Public Safety Plan. An additional 1 member was found to not be in the July 1, 2023 actuarial valuation data. The remaining 4 members transferring to the State Public Safety Employees group are currently in the Main System.

The actuarial impact of this change will depend specifically on the number and age of new members who would enter the Public Safety Plan, and the amount of liabilities and assets (if any) that would be transferred into the Public Safety Plan.

The following comments are general in nature:

- Eligible firefighters who currently participate in NDPERS in the Main System would have a normal cost plus an amortization payment of the increase in past service liability as a result of the transfer. The normal cost impact would be similar to the normal cost impact described for political subdivisions transferring from outside of NDPERS. It is assumed that the Main System past service liability would be transferred to the Public Safety with prior Main System service System in the form of an asset transfer equal to the value of service accrued under the Main System and the funded ratio under the Main System (about 66% as of July 1, 2023).
 - The following information is based on the results from the actuarial valuation as of July 1, 2023, for the Public Safety with prior Main System service System
 - Board approved employer contribution rate of 9.81% of pay (11.40% effective January 1, 2024)
 - For the State Public Safety Employees group, the employer contribution rate is 12.75% of pay effective August 1, 2023 and 14.34% of pay effective January 1, 2024
 - Employer normal cost rate (including administrative expenses) of 13.56% of pay
 - Average age of active employees of 36.7
 - Average benefit service of active members of 6.9 years
 - Normal retirement eligibility conditions of age 65 or Rule of 85 in the Main System (age 65 or age 60 with Rule of 90 for Main System members enrolled after December 31, 2015) and age 55 with three years of service or Rule of 85 in the Public Safety System
 - Early retirement eligibility conditions of age 55 with three years of service in the Main System and age 50 with three years of service in the Public Safety System
 - Because the Public Safety with prior Main System service System contains more favorable retirement provisions than the Main System, there would be an increase in past service liability as a result of the transfer. Therefore, the net impact of the transfer is expected to result in an increase in unfunded actuarial accrued liability to the Public Safety System due to an asset transfer that is about 66% of the actuarial accrued liability under the Main System and a higher actuarial accrued liability under the Public Safety with prior Main System service System.

- If the transferring group has a total rate (employer normal cost plus amortization of their unfunded liability) that is lower than the Board approved employer contribution rate (current 14.34% of pay), there will be a positive impact to the System.
- If the transferring group has a total rate (employer normal cost plus amortization of their unfunded liability) that is higher than the Board approved employer contribution rate (current 14.34% of pay), there will be a negative impact to the System.

The cost impact calculated in this letter is based on the data for the Public Safety with Prior Main System Service system as of the July 1, 2023 actuarial valuation and additional data provided by PERS. Under the baseline scenario, the total number of active members in the Public Safety with Prior Main System Service system is 1,225, including 181 currently in the State Public Safety Employees group. Under the alternate scenario, the total number of active members in the Public Safety with Prior Main System Service system is 1,229, including 185 in the State Public Safety Employees group. It is assumed that members would transfer all service to the State Public Safety Employees group and that there would be a corresponding asset transfer (described on page 2). The number of active members in the Main System is reduced by 4 members. Potential State Public Safety Employees members provided by PERS that were not in the data for the July 1, 2023 actuarial valuation were excluded from the actuarial analysis.

| Scenario | Baseline July 1, 2023 Valuation | Bill 25.0115.01000 | Difference |
|--|------------------------------------|--------------------|--------------|
| Main System Actuarial Accrued Liabilities | \$ 5,559,270,755 | \$ 5,559,158,225 | \$ (112,530) |
| Main System Actuarial Value of Assets | \$ 3,683,545,963 | \$ 3,683,472,464 | \$ (73,499) |
| Main System Normal Cost | \$ 152,758,636 | \$ 152,734,542 | \$ (24,094) |
| Main System Funded Ratio | 66.26% | 66.26% | 0.00% |
| Public Safety With Prior Main System Service Actuarial Accrued Liabilities | \$ 187,025,504 | \$ 187,169,935 | \$ 144,431 |
| Public Safety With Prior Main System Service Actuarial Value of Assets | \$ 128,273,097 | \$ 128,346,596 | \$ 73,499 |
| Public Safety With Prior Main System Service Normal Cost | \$ 12,179,130 | \$ 12,212,474 | \$ 33,344 |
| Public Safety With Prior Main System Service Funded Ratio | 68.59% | 68.57% | -0.02% |

Actuarial Impact of Bill 115 on State Public Safety Employees Actuarially Determined Contribution (ADC)

A separate ADC is not calculated for State Public Safety Employees members because the plan's assets are not allocated to any subgroups. State Public Safety Employees members contribute 6.0% of payroll, as compared to 5.5% for other Public Safety With Prior Service Plan members. State Public Safety Employees members also have a higher normal cost (NC) rate, due solely to demographic differences and the difference in member contributions. Our understanding is that statutes require employers of State Public Safety Employees members to contribute an amount determined by the board to be actuarially required to support the level of benefits.

The total NC rate for the plan including the administrative expense assumption (before any legislative changes) as of July 1, 2023 was 13.56% of pay. This is comprised of 12.97% of pay for the Public Safety group, 20.98% for the BCI group, and for State Public Safety Employees members, the total NC rate as of July 1, 2023 was 13.90% of pay, or 0.34% of pay higher than the group total. The additional member contribution of .50% for State Public Safety Employees members covers this extra cost.

As of July 1, 2023, the total Normal Cost of the State Public Safety Employees group initially decreases from 13.90% to 13.89% of projected compensation, due to the expansion of the group.

Bill 115 also increases the unfunded liability of the plan, which leads to an increase in the amortized unfunded liability portion of the ADC as of July 1, 2023. However, the covered payroll of the group is also expected to increase. The amortized unfunded liability portion of the ADC as a percentage of payroll decreased from 4.34% to 4.33%.



Policy Issue Analysis

Benefits Policy Issues

- Adequacy of Retirement Benefits

The Public Safety System contains more favorable retirement provisions than the Main System. Therefore, Bill 115 will enhance retirement benefits for firefighters employed by the state, because they will now be able to retire at an earlier age.

- Competitiveness

The Bill may increase the benefits competitiveness for firefighters who transfer into the Public Safety System.

- Benefits Equity and Group Integrity

Under the Bill, firefighters would retire under normal and early retirement dates that are similar to the retirement dates of their peers.

- Purchasing Power

No impact.

- Preservation of Benefits

No impact.

- Portability

No impact.

- Ancillary Benefits

No impact.

- Social Security

No impact.



Funding Policy Issues

- Actuarial Impacts

Previously noted.

- Investment Impacts

- Cash Flow: An asset transfer would increase initial cash flow to the Public Safety System, but decrease cash flows to the Main System.

Administration Issues

- Implementation Issues

The Bill will require that the System reprogram the prior service of firefighters to be counted under the rules applicable to firefighters. While this Bill would have minimal impact on administrative costs of the System, it would have an effect on the participating employer since the required contributions would increase.

- Administrative Costs

The Bill will have a minimal effect on administrative resources. However, employer contributions will increase from transfers from the Main System, since the statutory employer contribution rate for those transferring will increase from 8.12% (9.26% of pay for members enrolled on or after January 1, 2020) of salary to 14.34% under the Public Safety with prior Main service System (for the State Public Safety Employees group).

- 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 Bill will require employee communications to the firefighters to describe the new retirement rules applicable to them, including the normal retirement age and early retirement age.



Summary

- Firefighters that enter the Public Safety with prior Main System service System would be subject to the same eligibility conditions to receive benefits as Public Safety personnel.
- Firefighters that enter the Public Safety with prior Main System service System would be subject to the same benefit provisions as Public Safety personnel, and a 6.00% employee contribution rate.

Disclosures and Additional Information

This analysis is based on projections of the actuarial valuation results for the North Dakota Public Employees Retirement System (NDPERS). The actuarial assumptions used in this analysis are the same assumptions used in the actuarial valuation as of July 1, 2023, including a discount rate of 6.50%.

Future actuarial measurements may differ significantly from the current measurements presented in this cost analysis, due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; and changes in plan provisions, contribution amounts or applicable law.

If any of the provisions, underlying data or assumptions used in this analysis appear to be incorrect or unreasonable, please let us know as soon as possible so we can update the analysis.

This report was prepared using our proprietary valuation model and related software which, in our professional judgment, has the capability to provide results that are consistent with the purposes of the valuation, and has no material limitations or known weaknesses. We performed tests to ensure that the model reasonably represents that which is intended to be modeled.

We have reviewed the bill and provided an actuarial impact analysis as well as a policy issue analysis from our perspective as actuaries. However, the policy issue analysis should not be considered to be comprehensive and there may be additional benefits policy, administration issues or legal issues that are not discussed in this letter.

The signing actuaries are independent of the North Dakota Public Employees Retirement System.

Bonita J. Wurst and Abra D. Hill are Members of the American Academy of Actuaries (MAAA) and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein.



Representative Austen Schauer, Chair
Legislative Employee Benefits Programs Committee
June 7, 2024
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Please let us know if you have any questions or would like to discuss the results of this analysis further.

Sincerely,
Gabriel, Roeder, Smith & Company



Bonita J. Wurst, ASA, EA, MAAA, FCA
Senior Consultant



Abra D. Hill, ASA, MAAA, FCA
Consultant

cc: Rebecca Fricke, NDPERS
Joshua Murner, GRS



MEMORANDUM

TO: Derrick Hohbein, North Dakota Public Employees Retirement System

FROM: Audra Ferguson and Robert Gauss
ICE MILLER LLP

DATE: May 10, 2024

RE: Proposed Public Safety Legislation

This Memorandum is provided in confidence and subject to the attorney-client privilege. We have not provided copies to anyone other than the individual named above. To preserve the attorney-client privilege, you should disclose the contents of this Memorandum only to persons making decisions on the matters discussed herein.

Please allow this Memorandum to follow-up to your electronic mail message dated May 1, 2024. In particular, we have reviewed the following draft Bills:

- Bill No. 25.0115.01000 – Expanding the definition of “firefighter” in the Public Safety Plan to include those members employed by the State as a firefighter. A firefighter employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85.
- Bill Nos. 25.0045.01000 and 25.0041.01000– Including dispatchers, emergency medical personnel, and correctional officers employed by the State in the Public Safety Plan. Under these Bills, dispatchers, emergency medical personnel, and correctional officers employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85.
- Bill No. 25.0040.01000 – Including correctional officers employed by the State in the Public Safety Plan. Under this Bill, correctional officers employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85. [Note: Correctional officers employed by political subdivisions were already included in the Public Safety Plan.]
- Bill No. 25.0134.01000 – Defining “correctional officers” for purposes of the Public Safety Plan to include those individuals employed by a correctional facility who are enrolled in but not yet completed a correctional officer course.

This Memorandum highlights the federal law consideration and various definitions of a “public safety officer” and the impact on the plan qualification and member taxation. Specifically, this Memorandum considers the following federal law Internal Revenue Code (“Code”) sections and requirements:

- Code Section 72(t)(10)(B),
- Normal Retirement Age;
- Code Section 415(b), and
- Code Section 101(h).

I. CODE SECTION 72(t)(10)(B)

A. Relevant Federal Law

Internal Revenue Code (“Code”) section 72(t) imposes an additional 10% premature distribution tax on certain distributions that are paid to members from qualified plans. There are several exceptions to the premature distribution tax, including an exception for a "qualified public safety employee" in a governmental defined benefit plan who receives a distribution after separation from service after attainment of the earlier of age 50 or 25 years of service under the plan.¹ According to Code section 72(t)(10)(B), a "qualified public safety employee" is limited to the following:

- any employee of a State or political subdivision of a State who provides police protection, firefighting services, emergency medical services, services as a corrections officer or a forensic security employee providing for the care, custody, and control of forensic patients for any area within the jurisdiction of such State or political subdivision;
- any Federal law enforcement officer described in section 8331(2) or 8401(17) of title 5, United States Code;
- any Federal firefighter described in section 8331(21) or 8401(14) of such title;
- any air traffic controller described in 8331(30) or 8401(35) of such title;
- any nuclear materials courier described in section 8331(27) or 8401(33) of such title;
- any member of the United States Capitol Police;
- any member of the Supreme Court Police; and
- any diplomatic security special agency of the Department of State.

B. Analysis

¹ There is a separate exception for distributions paid to general employees after separation from service after attainment of age 55.

Correctional Officers, Emergency Medical Personnel, and Firefighters. Correctional Officers, Emergency Medical Personnel, and Firefighters clearly meet the definition of “Qualified Public Safety Officers” under Code Section 72(t)(10)(B).

Dispatchers. Dispatchers do not satisfy the Code section 72(t)(10)(B) definition of a “Qualified Public Safety Officer” because they do not directly provide police protection, firefighting services, or emergency medical services. As a result, a dispatcher could be eligible for early retirement benefits under the plan, but subject to an early distribution tax penalty if the member commenced a monthly benefit prior to age 55.

With respect to Bill No. 25.0134.01000 which expands the definition of “Correctional Officer” to include individuals who are employed by a correctional facility and who are enrolled in but have not yet completed a correctional officer course, this will be a facts and circumstances determination. If the individuals are in a correctional officer role and performing as a correctional officer, then we think the members would satisfy the definition of a “Qualified Public Safety Officer.” However, if the individuals are employed with a correctional facility, but not serving as a correctional officer until the individual has completed the correctional officer course, then the individual would not qualify as a “Qualified Public Safety Officer.” As noted above, the member could receive a benefit; however, if the member commences a monthly benefit prior to age 55, then the member will be subject to an early distribution penalty.

II. NORMAL RETIREMENT AGE

A. Retirement Age Under the Plan

Pursuant to N.D.C.C. § 54-52-17, the normal retirement age for members of the **Public Safety Plan** is as follows:

- The member is at least age 55 with 3 years of service; or
- The member has a combined total years of service credit and years of age equal 85.

By contrast, **under the Main Plan**, the normal retirement age for members is as follows:

- The member is at least age 65; or
- The member has a combined total years of service credit and years of age equal 85.

N.D.C.C. § 54-52-17.

Additionally, a member of the Public Safety Plan may receive an early retirement benefit when the member attains age 50 with 3 years of service. *Id.*

B. Pending Normal Retirement Age Regulations for Governmental Plans

On January 27, 2016, the IRS and Treasury Department issued a Notice of Proposed Rulemaking regarding proposed regulations regarding normal retirement age for governmental pension plans ("Proposed Regulations"). The Proposed Regulations have been long awaited as, in 2007, the IRS issued final regulations defining normal retirement age which are applicable to private sector pension plans. The Proposed Regulations distinguish between governmental plans which allow in-service distributions and those which do not. For governmental plans that do allow in-service distributions, the NRA must meet a "reasonably representative" requirement, which can be satisfied by using any of several safe harbor NRAs set forth in the proposed regulations.

For governmental plans that do not allow in-service distributions, the proposed regulations provide that the NRA must still meet the pre-ERISA vesting rules. In this regard, use of a period of service to determine normal retirement age under a governmental plan would be permissible if the period of service used is reasonable and uniformly applicable and the other pre-ERISA rules related to normal retirement age are satisfied. One of the pre-ERISA rules allows a governmental plan to specify a normal retirement age that is lower than age 65 **if that age represents the age at which employees customarily retire in the industry**.

As part of the Proposed Regulations, several sets of safe harbors were announced. For instance, the Proposed Regulations establish a general safe harbor for a normal retirement age that is at least age 62 or the later of age 62 or another specified date (such as the fifth anniversary of plan participation); this is referred to as the general safe harbor.² The Proposed Regulations also developed the following additional safe harbors specific to governmental plans:

- age 60 with five years of service;
- age 55 with ten years of service;
- a combined age and years of service of 80 or more; and
- any age with 25 years of service (in combination with a safe harbor that includes an age).

Additionally, the Proposed Regulations established separate safe harbor rules for qualified public safety employees. For qualified public safety employees, the proposed safe harbors are:

- age 50;
- combined age and years of service of 70 or more;
- any age with 20 years of service.

² It is important to note that subsequent to the Proposed Regulations, the SECURE Act reduced the age for in-service distributions under Code Section 401(a)(36) from 62 to 59 ½. As a result, it is likely the IRS will revise the general safe harbor to age 59 ½.

Importantly for purposes of the Bills, the term qualified public safety employee is defined by reference to Code § 72(t)(10)(B).

It is important to note that, under the Proposed Regulations, a plan may have more than one normal retirement age. For instance, a plan may have one normal retirement age for one classification of employees and one or more normal retirement ages for one or more different classifications of employees. This is permissible so long as each normal retirement age satisfies the pre-ERISA requirements.

Finally, the Proposed Regulations establish that a normal retirement age which does not satisfy any of the governmental plan safe harbors could still satisfy the reasonably representative requirement based on all of the relevant facts and circumstances. The normal retirement age must be evaluated and shown to satisfy a good faith determination of the typical retirement age for the industry in which the covered work force is employed and that the normal retirement age is otherwise consistent with the pre-ERISA vesting requirements.

While the IRS has stated its intent to issue final regulations, the Proposed Regulations remain pending. Separately, it is important to note that the Proposed Regulations state they are anticipated to be effective for employees hired after the effective date of the final regulations. In the meantime, governmental plan sponsors may rely on the Proposed Regulations prior to the effective date and pending the issuance of final regulations.

C. Analysis

Correctional Officers,³ Emergency Medical Personnel, and Firefighters. The normal retirement age under the Public Safety Plan satisfies the Safe Harbor for Qualified Public Safety Employees. As noted above, Correctional Officers, Emergency Medical Personnel, and Firefighters clearly meet the definition of “Qualified Public Safety Officers” under Code section 72(t)(10)(B). Thus, the lower normal retirement age proposed under the Bills for these job classifications does not raise a concern under federal law.

Dispatcher. As noted above, a Dispatcher does not satisfy the definition of a “Qualified Public Safety Officer.” Thus, NDPERS cannot rely on the Normal Retirement Age Safe Harbor for Qualified Public Safety Officers. However, the above IRS guidance is clear that, while a governmental plan that does not provide in-service distributions has flexibility in establishing a Normal Retirement Age, the parameters are not unlimited. Specifically, the Normal Retirement Age must satisfy the pre-ERISA vesting rules.

The pre-ERISA vesting rules provided that

³ As noted above, with respect to Bill No. 25.0134.01000 which expands the definition of “Correctional Officer” to include individuals who are employed by a correctional facility and who are enrolled in but have not yet completed a correctional officer course, this will be a facts and circumstances determination. If the individual is serving as a correctional officer with a job classification of a Correctional Officer, then the individual satisfies the definition of a “Qualified Public Safety Officer” under Code section 72(t)(10)(B).

[A]lthough normal retirement age under a pension or annuity plan is ordinarily age 65, a plan may specify a lower age at which the employee has the right to retire without the consent of the employer and to receive retirement benefits based on the amount of the employee's service at the full rate set forth in the plan if this lower age would be an age at which employees customarily retire in the particular company or industry, and if the provision permitting receipt of unreduced benefits at this age is not a device to accelerate funding.

Preamble to the Proposed Regulations Regarding Normal Retirement Age (Jan. 27, 2016). Thus, NDPERS will need to establish that age 55 with 3 years of service represents an age at which Dispatchers customarily retire. Note: The combined age and years of service of 85 satisfies the General Employee Normal Retirement Age Safe Harbor.

III. CODE SECTION 415(b) DEFINITION OF "QUALIFIED PARTICIPANTS"

A. Relevant Federal Law

Code section 415(b) provides that the annual benefit in the form of a single life annuity for a plan participant who is between the ages of 62 and 65 may not exceed \$160,000, as adjusted for inflation in \$5,000 increments (for 2024, the limit is \$275,000). However, there is no age-based actuarial reduction required for benefits beginning prior to age 62 for "qualified participants." Here, the Code defines "qualified participants" as those who (1) are participants of a defined benefit of a State or political subdivision of a State; and (2) have completed at least 15 years of service as a full-time employee of any police department or fire department which is organized and operated by the State or political subdivision to provide police protection, firefighting services, or emergency medical services, or as a member of the U.S. Armed Forces.

Importantly, the scope of the 415(b) public safety exception varies from the definition of public safety employees in Code section 72(t)(10)(B). Under Code section 415(b), the application of the rule depends on whether the employer is a police department or fire department of the state or political subdivision, rather than on the job classification of the individual participant. As a result, the definition of "qualified participant" under Code section 415(b) is more inclusive in terms of the types of employees that are covered than many public safety provisions, but less inclusive in terms of the types of employers that are covered.

Generally, the 415(b) exception is very beneficial to public safety officers and to other employees of police and fire departments, including non-public safety personnel. However, this definition does not cover all public safety employees. The examples in the Final 415 Regulations make it clear that an employee of a police division of an agency may be a qualified participant, but that an ambulance driver who works for an emergency medical services agency rather than for a police or fire department cannot. While the name of the agency is not important, it is necessary that the employer (or at least the appropriate division of employer) function as a police or fire department. For example, correctional officers will not be treated as employees of a police department for purposes of Code 415(b), as decided in PLR 201347028.

B. Analysis

NDPERS should be aware that only those Public Safety Plan participants that satisfy the definition of “qualified participants” will be eligible for the unreduced Code section 415(b) limit. This will include the Firefighter members, but it will not include Correctional Officers or Medical Services Personnel. In addition, Dispatchers will be considered “qualified participants” only if they are employees of a police or fire department. As a result, NDPERS would have to make sure its systems are programmed to recognize that not all employees in the Public Safety Plan would be eligible for the unreduced Code Section 415(b) limit.

IV. CODE SECTION 101(h) – DEFINITION OF PUBLIC SAFETY OFFICER

A. Relevant Federal Law

Code section 101(h) provides a federal income tax exclusion for certain amounts paid as a survivor annuity on account of the death of a "public safety officer" killed in the line-of-duty. The exclusion applies:

- if the survivor annuity is provided by a qualified 401(a) plan to the spouse, former spouse, or a child of the officer; and
- to the extent the annuity is attributable to the officer's service as a public safety officer.

In accordance with 42 U.S.C. 3796b(9) (the Omnibus Crime Control and Safe Streets Act of 1968), a "public safety officer" includes (i) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or an ambulance crew; or (ii) with some limitation, an employee of a State, local or tribal emergency management or civil defense agency who is performing official duties in cooperation with the Federal Emergency Management Agency.

B. Analysis

NDPERS should be aware that only those Public Safety Plan survivors of participants that satisfy the definition of “public safety officers” will be eligible for the tax-free annuity under Code section 101(h). This will include the Firefighter members and Medical Services Personnel, but it will not include Correctional Officers. In addition, unless Dispatchers are considered law enforcement officers, firefighters, part of a rescue squad or part of an ambulance crew, they would only be included in this definition of a public safety officer for purposes of Code section 101(h) if they fall into the second category of working in cooperation with the Federal Emergency Management Agency.

V. SUMMARY OF BILL ANALYSIS

| <u>Bill No.</u> | <u>Code § 72(t)</u> | <u>NRA</u> | <u>Code § 415(b) Reduction</u> | <u>Code § 101(h)</u> |
|---|---|---|--|---|
| 25.0115.01000 Adding Firefighters employed by the State | <ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service” | <ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” Satisfies the NRA Safe Harbor for Qualified Public Safety Officer” | <ul style="list-style-type: none"> Satisfies the definition of “qualified participants” and eligible for the unreduced Code section 415(b) limit. | <ul style="list-style-type: none"> Satisfies the definition of “public safety officers” and the survivor will be eligible for the tax-free annuity under Code Section 101(h). |
| 25.0134.01000 Amending definition of a “correctional officer” to include an individual employed by a correctional facility who is enrolled in but not yet completed a correctional | <ul style="list-style-type: none"> If the individuals are in a correctional officer role and performing as a correctional officer, then we think the members would satisfy the | <ul style="list-style-type: none"> Same | <ul style="list-style-type: none"> Do not satisfy the definition of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit. | <ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h). |

| | | | | |
|--|--|---|--|--|
| officer course. | definition of a “Qualified Public Safety Officer.” However, if the individuals are employed with a correctional facility but not serving as a correctional officer until the individual has completed the correctional officer course, then the individual would not qualify as a “Qualified Public Safety Officer.” | | | |
| 25.0045.01000 and 25.0041.01000 Amends the Public Safety Plan to include Dispatchers, Medical | <u>Correctional Officers and Medical Service Personnel</u> • Satisfies the definition | <u>Correctional Officers and Medical Service Personnel</u> • Satisfies the definition of a | <u>Correctional Officers and Medical Services Personnel</u> • Do not satisfy the definition | <u>Correctional Officers</u> • Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity |

| | | | | |
|--|--|---|--|---|
| Service Personnel and State Correctional Officers. | <p>of a “qualified public safety officer”</p> <ul style="list-style-type: none"> No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Does not satisfy the definition of a “qualified public safety officer” Will be subject to a 10% early distribution penalty for monthly benefits commenced before age 55 | <p>“qualified public safety officer”</p> <ul style="list-style-type: none"> Satisfies the NRA Safe Harbor for Qualified Public Safety Officer” <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Do not satisfy the definition of a “qualified public safety officer” Will need to demonstrate that the NRA represents the age at which employees customarily retire in the industry. | <p>of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit.</p> <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Will be considered “qualified participants” only if they are employees of a police or fire department. | <p>under Code Section 101(h).</p> <p><u>Medical Services Personnel</u></p> <ul style="list-style-type: none"> Satisfies the definition of “public safety officers” and the survivor will be eligible for the tax-free annuity under Code Section 101(h). <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h), unless they are considered law enforcement officers, firefighters, part of a rescue squad or part of an ambulance crew. |
|--|--|---|--|---|

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|---|--|--|--|---|
| 25.0040.01000 | | | | |
| Amends the Public Safety Plan to State Correctional Officers. | <ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service | <ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” Satisfies the NRA Safe Harbor for Qualified Public Safety Officer | <ul style="list-style-type: none"> Do not satisfy the definition of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit. | <ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h). |

69TH LEGISLATIVE ASSEMBLY**House Bill 1112 - “Relating to membership of the NDPERS Public Safety Defined Benefit Retirement Plan.”**

Senate State and Local Government Committee

March 6, 2025

Testimony Submitted by:

Tom Claeys, State Forester

Chair Roers, members of the Senate State and Local Government Committee, for the record, my name is Tom Claeys, North Dakota Forest Service - State Forester. The purpose of this bill is to provide an opportunity for state firefighters to be included in the NDPERS Public Safety Defined Benefit Retirement Plan. Current language excludes state firefighters from the plan, this legislation seeks to remove those barriers to participation.

NDFS wildland firefighters help ensure the protection of lives, property and natural resources by training and equipping North Dakota’s rural volunteer fire departments. Grant programs provide departments with assistance in training, purchasing or repairing equipment and vehicles. A companion program loans surplus federal equipment to departments for enhancing firefighting capabilities. Most importantly, when conditions deteriorate and local departments exceed their mutual aid capacity, the agency and our designated wildland firefighting staff, provide essential firefighting resources during catastrophic wildfire events.

The draft bill was presented at the Employee Benefits Program Committee on Monday, June 17, 2024, and was given favorable consideration. HB 1112 also passed through the House Government and Veterans Affairs Committee. There were however, some questions and concerns expressed along the way. I’d like to address some of those concerns.

The number of NDFS firefighters that would potentially transition to the Public Safety Defined Benefit Retirement Plan is limited and exclusive to firefighters, it does not include forestry staff. It is also not intended to include casual firefighters that may have collateral firefighting duties included in their job responsibilities. NDFS firefighters are provided time for physical fitness training during the workday to maintain rigorous fitness standards, are expected to pass a work capacity test and undergo comprehensive physicals annually. At this time, we are not aware of any additional firefighters from other agencies that meet similar fitness standards or firefighter classifications.

Another concern was that the agency was, or would be, hiring older employees closer to the Public Safety Defined Benefit Retirement Plan retirement age. Of our full-time employees, 3 are in their early-mid 40s and have worked for the agency for a combined 28 years (15, 11, 2). One is in their early 30s and has worked for 8 years. Three are in their 20s and have worked for the agency for a combined 16 years (8,5,3). The agency has recruited young firefighters at the beginning of their careers, often after working as seasonal firefighters for the agency. We have been successful during a time when other states and federal agencies have added annual bonuses and additional incentives such as hazard pay to attract firefighters. Unfortunately, in the last 5 years, we have also lost @21 firefighters to federal agencies and other western states, so the competition for qualified firefighters is intense. Our firefighters represent a significant investment in time and money to develop their wildland fire qualifications. The NDFS Fire Management Officer has created an environment that is helping recruit and retain young employees that not only want a career in public service, they want to fight fire and they also want to live in North Dakota.

The agency recognizes that this request changes the overall benefits to state firefighters and that when they were hired, they understood the benefits that they were eligible for. NDSU, and the state of North Dakota, provide an excellent benefit package for full-time employees and we are very appreciative. This is an opportunity to provide a slightly different benefit package, comparable to what some local firefighters, and others that fall within the current definitions of public safety, are eligible for. It is an opportunity to recognize that, unlike most state employees.....firefighters, law enforcement, and other specialized positions, all put their own lives at risk at work to protect the lives and property of others.

We recognize that this bill touches the same sections of code as other bills. We understand and appreciate the work of the committee as you consider all bills and look forward to the opportunity to work with you moving forward.

We greatly appreciate the opportunity to consider including state employed firefighters into the NDPERS Public Safety Defined Benefit Retirement Plan. We also thank our partners who could not be with us today and who have submitted written testimony. I would stand for questions, while acknowledging that there are others here today prepared to testify and share their perspectives.

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Professional Fire Fighters of North Dakota

Darren Schimke, President | 218-779-4122 | dschimke@wiktel.com

3/6/2025

Senate State and Local Government Committee

Re: Support of HB 1112

Madam Chair Roers and members of the Senate State and Local Government Committee.

My name is Darren Schimke, President of the Professional Fire Fighters of North Dakota. I represent 420 professional firefighters throughout the State of North Dakota. We appreciate this opportunity to provide testimony in support of HB 1112.

North Dakota Forest Service Firefighters work in some of the most indescribable conditions for long periods of time. During those times, they are exposed to chemicals that are produced from the burning vegetation. These incidences may also include involved buildings and vehicles/farm equipment. Their short time off is spent mostly outdoors in a camp. Their physical conditioning is truly extraordinary.

Additionally, they work alongside professional and volunteer firefighters during fire incidences and assist with mutual aid requests. The NDFS firefighters provide invaluable training to other firefighters.

The toll that this profession has on the human body can be quick and severe. The NDFS firefighters provide public safety and they deserve to be eligible for membership within the NDPERS Public Safety Defined Benefit Retirement Plan.

The PFFND respectfully requests a Do Pass on HB 1112.

Thank you,

Darren Schimke

69TH LEGISLATIVE ASSEMBLY

House Bill 1112 - "Relating to membership of the NDPERS Public Safety Defined Benefit Retirement Plan."

Senate State and Local Government Committee

March 6, 2025

Testimony Submitted by:

Kindred Fire Department, Wildland Task Force Crew Lead

Chief Richard A. Schock

Purpose:

Madam Chair Roers and members of the Senate State and Local Government Committee, my purpose of submitting testimony is to request your committee to include state firefighters in subsection 8 of section 54-52-01, section 54-52-06.4, subsection 3 of section 54-52-17, and subsection 4 of section 54-52-17 of the North Dakota Century code. The current language does not provide for state firefighters, including (NDFS) North Dakota Forest Service firefighters, to participate in the NDPERS Public Safety Defined Benefit Retirement Plan. This legislation seeks to remove barriers to participation and inclusion to a much-deserved Benefit Plan.

Background:

As a rural fire department with a close relationship to wildland fire, we have worked alongside the NDFS firefighters' multiple times, we see firsthand when they travel to locations for suppression efforts, they must consider that they will be fighting fires with the bare essentials for equipment during extreme wildfire conditions and staying in very primitive accommodations. They are usually a long way from their home station and do not have access to a lot of the equipment and ppe that most even the smallest of departments have access to. The health risks alone should be a primary reason to offer this program to include participation of state firefighters including NDFS firefighters. Wildland fire smoke is a mixture of gases and particles such as carbon monoxide (CO) and respirable particulate matter (PM) that may cause short- and long-term health effects. Wildland firefighters can be exposed to smoke at wildfires and "prescribed" fires (planned and intentionally ignited low-intensity fires). The contents of and exposure to wildfire smoke can vary greatly throughout the day depending on the vegetation type, fire behavior, and meteorological conditions. Research has shown that wildland firefighters have been exposed to gases and particles such as CO and PM above the occupational exposure limits during both wildland and prescribed fires. While burning vegetation is the primary exposure of concern for wildland and prescribed fires, when fires burn in the wildland urban interface (WUI, where wildland vegetation and urban areas meet) the smoke may contain compounds that are more like what structural firefighters encounter.

Wildland firefighters will often suppress these fires and may be exposed to some of the hazardous compounds of WUI smoke such as volatile organic compounds (VOCs), flame retardants, and polycyclic aromatic hydrocarbons (PAHs). However, wildland firefighters do not have the benefit of wearing some of the personal protective equipment (PPE) typically used in a structural response (e.g., self-contained breathing apparatus [SCBA], turnout gear) that could provide protection from these compounds. Additionally, wildland firefighters may be exposed to smoke at firefighting base camps (incident command posts) where they eat and rest while off-duty. These health concerns are just the tip of the iceberg. There are several other health risks they face which are hard to quantify like mental health and other bodily injuries.

The firefighters working for the NDFS have provided our department and surrounding agencies with training that has been paramount to our communities in preservation of life and property. They were in Kindred assisting us with a 300-acre fire when a lot of local agencies were battling fires in their own districts and together, we saved a generational farm with minimal defensible space. I can personally speak to the talent and perseverance endured by each and everyone of them and hope that you will take into consideration the time and effort put in by each and every state employed firefighter and be inclusive to allow participation into the NDPERS Public Safety Defined Benefit Retirement Plan so we can continue to grow as an organization and help provide help in times of need. I would like to thank you all for your time in allowing me to testify to this important measure.

I ask respectfully for a Do Pass on HB 1112.

Chief Richard A. Schock

Kindred Fire Department

ND Wildland Fire Task Force

69TH LEGISLATIVE ASSEMBLY**House Bill 1112 - "Relating to membership of the NDPERS Public Safety Defined Benefit Retirement Plan."**

Senate State and Local Government

February 6, 2025

Testimony Submitted by:

Ken Wangen, President North Dakota Fire Chiefs Association

Chairwoman Roers, members of the Senate State and Local Government Committee, the North Dakota Fire Chiefs Association supports this bill.

State firefighters are just that firefighters. Firefighters employed by the state, not a district or community. But rest assured they are highly trained and great assets to all fire departments in the state.

State firefighters are not excluded from the dangers of exposures to hazards typical of firefighters employed by a district or community simply because they are employed by the state of North Dakota. With that in mind why would they be excluded from the NDPERS Public Safety Defined Benefit Retirement Plan if they meet all the "other requirements" current fire fighters on the plan meet?

Firefighting especially wildland firefighting has always been a younger person's occupation due to the toll it takes on the body. That issue is double edged as #1 injury or health concerns force retirement #2 replacements without proper incentives it become harder to recruit replacements. Offering eligibility to the NDPERS Public Safety Defined Benefit Retirement Plan goes a long way to addressing those issues.

The fall of 2024 showed the entire state fire services that being prepared will be and should be priority #1. The perfect storm happened early October and the state firefighters were prepared and deployed assisting with containing and eventually extinguishing fires that taxed local response to their limits.

Simply said offering eligibility to the NDPERS Public Safety Defined Benefit Retirement Plan is simply another tool to help recruit and retain personnel to ensure that we have well trained and capable people ready to respond.

Please again take this testimony as support for HB1112 from the North Dakota Fire Chiefs Association.

Ken Wangen

President North Dakota Fire Chiefs Association

Fire Chief Carrington Volunteer Fire and Rescue



March 6th, 2025

Senate State and Local Government Committee
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Support for HB 1112

Chairman Roers & Committee Members,

Please accept this letter as support for HB 1112. This bill recognizes state-employed firefighters as eligible ND PERS Public Safety plan participants. Today, only firefighters employed by political subdivisions can receive this benefit. Although we are thankful for inclusion in this state-operated system, it is only right that state employees who perform this job function receive equal access.

A primary reason for the existence of the Public Safety portion of the PERS program is to provide a retirement plan that aligns with the job's extreme physical demands. Our state firefighters work alongside the firefighters of the political subdivisions and perform much of the same work. Although our state firefighters primarily perform wildfire firefighting duties, they are often tasked with structural firefighting responsibilities. Many wildfires spread to structures and all wildfires pose this risk. In the end, the job performance requirements and expectations are the same. Arguably, the work performed by our state-employed Forest Service firefighters is much more labor-intensive. Their incidents often last weeks and require extreme physical exertion over much longer periods of time.

In addition to the job's physical demands, another primary reason for this benefit is the significant risk that our firefighters face of suffering from long-term health complications. These long-term health risks often involve cancer and cardiovascular disease. After a career of providing emergency response, the development of these health conditions often makes alternative employment difficult at best. At its most basic level, the ND PERS Public Safety plan is about caring for those who have committed their lives to taking care of us.

Every year, the state-employed firefighters of the ND Forest Service demonstrate their need and value to our state. In 2024, the ND Forest Service was crucial to fighting the wildfires that affected McKenzie and Williams County. In addition to the boots on the ground work that they performed, their organization has worked with all of the services throughout the state to

provide training. Without their efforts, these fires would undoubtedly have been much worse. 2024 was not a stand-alone or outlying year. Wildfires occur every year in North Dakota, and the reality is that they are happening more frequently and have more significant impacts. This increase in severity amplifies the need to provide for our Forest Service Firefighters and recognize their contributions to Public Safety in North Dakota.

Firefighting is not a simple job. Every year, firefighters throughout the country lose their lives in the line of duty. This job is inherently dangerous. To perform it well, you must make a significant commitment to training. Firefighters are lifelong learners. Technology and tactics are constantly evolving, and having staff with experience is critically important to accomplishing our tasks safely so that everyone can go home to their families. Having adequate benefits matching job demands is critical to recruitment and retention.

Thank you for your time and efforts in considering this important piece of legislation. I respectfully ask for your support by recommending HB 1112 as a "do pass" to the Senate floor.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey A. Johnson". The signature is fluid and cursive, with the first name "Corey" being the most prominent.

Corey A. Johnson, Assistant Chief of Operations
City of Williston Fire Department
(701) 572-3400 ext. 2317
coreyj@ci.williston.nd.us

69TH LEGISLATIVE ASSEMBLY**House Bill 1112 - “Relating to membership of the NDPERS Public Safety Defined Benefit Retirement Plan.”**

Senate State and Local Government Committee

March 6, 2025

Testimony Submitted by:

Ryan Melin, Fire Management Officer – North Dakota Forest Service

Chair Roers, members of the committee, my name is Ryan Melin and I serve as the Fire Management Officer for the North Dakota Forest Service (NDFS). In this role I lead the agency’s wildland fire response program. I am extremely fortunate to call myself a firefighter. Every day I get to walk into a fire station and remember the hero’s that I looked to up as a kid. I can vividly remember walking into the Mohall Fire Department after my father had responded to wail of the town siren. The smell of smoke and watching what I believed to be giants within my small town preparing themselves and their equipment to answer the next call. Many years later I am lucky enough to find myself in their shoes. This career has taken me from a small town in northern North Dakota to assignments across the country, its created friendships that will last a lifetime, and today has given me opportunity to stand humbly in front of you. I believe we all have a role in making the world a better place and the fire service has given me that gift. As I speak about the challenges I and others face please understand I hold the fire service in the highest regard and I could not imagine myself in another profession.

My purpose for testifying this morning is to support the request to broaden the definition of firefighter within North Dakota Century Code to include state employed firefighters. As it has been explained the current language does not provide the opportunity for state employed firefighters, to participate in the NDPERS Public Safety Defined Benefit Retirement Plan.

NDFS firefighters help ensure the protection of lives, property and natural resources by responding to fire suppression assistance requests, training and equipping North Dakota’s fire departments. NDFS provides support to local fire departments through its cooperative fire agreement which acts similar as a mutual aid agreement or through activation of the state emergency operation plan. As NDFS has increased its capacity through the years local fire departments have looked to NDFS for its expertise in wildland fire. NDFS routinely propositions firefighters in high fire danger areas and responds to requests all across North Dakota.

NDFS firefighters work alongside federal, state, tribal and local firefighters in and outside of North Dakota. We are a state and national shared resource, who regularly work for extended periods of time with national assignments regularly last 21 days. During these assignments’ firefighters are often exposed to extremely hazardous environmental conditions. Wildland firefighters are regularly exposed to hazards on the job and during off-hours while sleeping outdoors at the incident, many times this is right along the fire edge. Some of these hazards include smoke and silicate inhalation, off-gassing from burning structures/vehicles, and chemicals used during the suppression fires. It is estimated wildland firefighters with five or more years in service who have spent at least 50 days (annually) exposed to environmental hazards are:

- Up to 43% increased risk of mortality from lung cancer

- Up to 30% increased risk of mortality from cardiovascular disease

Given the continued increase in intensity and duration of wildfires and the increased proximity to the urban interface and communities, wildland firefighters will continue to be exposed to environmental hazards and harmful chemicals. In 2024, NDFS firefighters worked 10,978 hours on fire assignments.

Wildland firefighting is difficult for those in their 20s, 30s and 40s, it becomes progressively more difficult in their 40s and 50s and now as I am in my mid 40s I have a front row seat to that. This October fires were a reminder that my fellow colleagues in their 20s have a little bit more in the tank than I do. The cumulative effects of sleep deprivation and arduous work were very evident along with the extended recovery time. It is a hard pill to swallow, but I can honestly tell you that I cannot do at 44 what I could do at 30. Offering earlier retirement opportunities than they currently have ensures that, as a state, we don't place an extraordinarily risk on firefighters in their late 50s and 60s. We recognize that placing an older firefighter on fire ground during a wildland fire emergency to protect individual lives and property, dramatically increases the risk to their own life.

I appreciate the opportunity to share this information with you and for your consideration of including state employed firefighters, into the NDPERS Public Safety Defined Benefit Retirement Plan.

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69TH LEGISLATIVE ASSEMBLY**House Bill 1112 - "Relating to membership of the NDPERS Public Safety Defined Benefit Retirement Plan."**

Senate State and Local Government

March 6, 2025

Testimony Submitted by:

Jeff Thompson, Administrative Chief, Dickinson Rural Fire Protection District

Purpose:

Chairman Roers, members of the Senate State and Local Government Committee, my purpose in submitting this testimony is to support the request to include state firefighters in subsection 8 of section 54-52-01, section 54-52-06.4, subsection 3 of section 54-52-17, and subsection 4 of section 54-52-17 of the North Dakota Century Code. Current language does not provide for an opportunity for state firefighters, including North Dakota Forest Service (NDFS) firefighters, to participate in the NDPERS Public Safety Defined Benefit Retirement Plan. This legislation seeks to remove barriers to participation.

NDFS wildland firefighters are just that firefighters. Firefighters employed by the state, not a district or community. But rest assured they are highly trained and great assets to all fire departments in the state.

NDFS firefighters are not excluded from the dangers of exposures to hazards typical of firefighters employed by a district or community simply because they are employed by the state of North Dakota. The state also has no issues calling on them in a time of need. So, it makes sense that the state includes them in the benefits that will assure they are here when needed.

Firefighting especially wildland firefighting has always been a younger person's occupation due to the toll it takes on the body. That issue is double edged as #1 injury or health concerns force retirement #2 replacements without proper incentives become harder to recruit. Offering eligibility to the NDPERS Public Safety Defined Benefit Retirement Plan goes a long way to addressing those issues.

The fall of 2024 as well as the spring of 2021 showed the entire state fire services that being prepared will be and should be priority #1. We continue to see each wildland fire season be the worst ever seen in our state and the NDFS firefighters where prepared and responded with the professionalism and knowledge to take the task on putting others above themselves. This is a way to help say thanks and ensure they stay in our state.

Simply said offering eligibility to the NDPERS Public Safety Defined Benefit Retirement Plan is simply another tool to help recruit and retain personnel.

Please again take this testimony as support for HB1112 from the Dickinson Rural Fire Protection District.



Billings County Rural Fire Protection District
Po Box 597, Belfield ND, 58622
Chief Shockley 701-690-0041

March 5, 2025

To: Senate State and Local Government Committee

Subject: HB 1112 and making state employed firefighters eligible for the NDPERS Public Safety Retirement Plan

Chairwoman Roers and Committee Members, I am writing in support of allowing state employed firefighters to be eligible for the NDPERS Public Safety Defined Benefit Retirement plan. I am a lifelong resident of ND and I have been a firefighter for 25 years, both Volunteer and Career. Out of those 25 years I have been a Fire Chief for 17 of those years.

Through my years of service, I have seen the NDFS provide an excellent service to the fire departments across the state. They provide substantial assistance when it comes to helping fire departments secure funding and equipment through their grants that they obtain and disburse to the ND fire departments.

They have brought training to a new level by obtaining the fire simulation table. With this, they can simulate fires that firefighters can watch live and interact with, as well as simulate an actual response to wildland fires. This not only provides excellent training to the fire departments but it also greatly improves life/safety for all firefighters. With this simulation table the NDFS is not shy about taking the table around the state to other fire departments to share this very important training.

The NDFS has also responded to several incidents to assist the Billings County Rural Fire Protection District and myself countless time. Their response has been exceptional both with helping provide man power and helping with state resources such as the National Guard Black Hawks. While I was Incident commander when the Medora Fire of April 1, 2021, broke out, they were in contact with myself immediately and started providing assistance. They are always ready to work with the locals and assist in anyway.

I was not aware that the NDFS was not included with other firefighters in the NDPERS Public Safety Retirement Plan and this is very disheartening to me. I have seen first hand on what they encounter on their responses, and that they encounter the same types of fires and environments that any other firefighter encounters that is included under this plan.

Fire fighter retention and recruiting is defiantly a challenge in ND. Adding state employed firefighters to this retirement plan will help in both retention and recruitment to the NDFS. This would assure that they can continue to retain and hire the best individuals so they can continue to provide a very important service to the state of ND and to every fire department in the state.

I fully support this proposal.

Sincerely,

Kyle Shockley, Fire Chief
Billings County Rural Fire Prot. Dist.

Senate State and Local Government Committee

March 6, 2025

Testimony on HB 1112

Submitted by: Robert Knuth, Training Director, North Dakota Firefighter's Association

Chairman Roers and Members of the Senate State and Local Government Committee:

I appreciate the opportunity to submit testimony in support of the proposed legislation to include state firefighters under subsection 8 of section 54-52-01, section 54-52-06.4, subsection 3 of section 54-52-17, and subsection 4 of section 54-52-17 of the North Dakota Century Code. This legislation is critical as it removes barriers preventing state firefighters, including those with the North Dakota Forest Service (NDFS), from participating in the NDPERS Public Safety Defined Benefit Retirement Plan.

Currently, state firefighters are excluded from this plan, creating inequity in recognizing their vital contributions to public safety. This legislation seeks to correct that oversight and ensure that state-employed firefighters receive the same retirement benefits as other public safety professionals.

The NDFS wildland firefighters are not only front-line responders but also serve as instructors and subject matter experts for the North Dakota Firefighter's Association (NDFA). Their expertise is critical in training rural firefighters, developing certification programs, and preparing local departments to handle the increasing challenges of wildland fires. Their technical knowledge and real-world experience are essential to fulfilling NDFA's mission of equipping North Dakota's fire service for emergencies.

As the Assistant Chief of the Minot Rural Fire Department, I've witnessed the invaluable support provided by NDFS firefighters. In 2008, during a wildland fire sparked by power lines in East Side Estates southeast of Minot, extreme drought conditions caused the fire to spread rapidly. Despite mutual aid from over six departments, our resources were overwhelmed. A secondary fire, ignited by a train in Trestle Valley west of Minot, compounded the crisis. At this critical juncture, we called on the NDFS for assistance. Their response, including equipment and manpower, was pivotal in managing these fires when local capabilities were exceeded.

The October 2024 wildfires underscored the importance of preparedness across the state. Once again, NDFS firefighters demonstrated their readiness and ability to deploy where needed, supporting overburdened local departments.

The North Dakota Firefighter's Association fully supports this legislation. Allowing state-employed firefighters, including those with NDFS, to join the NDPERS Public Safety Defined Benefit Retirement Plan is a step toward recognizing their indispensable role in protecting lives and property across North Dakota.

Thank you for considering this important issue, and I urge the committee to advance this legislation.

Sincerely,

Robert Knuth

Training Director, North Dakota Firefighters Association; and
Assistant Chief, Minot Rural Fire Department