

**2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1274**

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1274  
1/30/2025

Relating to membership of the public employees retirement system public safety retirement plan.

9:14 a.m. Chairman Schauer opened the hearing.

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

Members absent: Representatives Brown, VanWinkle

### **Discussion Topics:**

- Stability of employees
- Proposed amendments

9:15 a.m. Representative Porter, District 34, testified in favor.

10:20 a.m. Colby Braun, Director of the Corrections and Rehabilitation, testified in favor and submitted testimony, #32083.

10:26 a.m. Blaire Thorson, North Dakota Peace Officers Association testified in favor.

10:27 a.m. Derrick Hohbein, Chief Operating and Financial Officer of NDPERS, provided neutral testimony and submitted testimony, #32141.

10:32 a.m. Chairman Schauer closed the hearing.

*Jackson Toman, Committee Clerk*

**HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE  
REPRESENTATIVE AUSTEN SCHAUER, CHAIR  
JANUARY 30, 2025**

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**NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1274**

Chairman Schauer and members of the House Government and Veterans Affairs Committee, I am Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). Today, I submit this verbal and written testimony in support of House Bill 1274, which proposes to add state correctional officers to the public safety retirement plan.

All law enforcement and corrections team members in all state agencies and political subdivisions are in the public safety retirement plan, with one exception. Only state correctional officers with the ND DOCR are not currently in the public safety retirement plan. This bill is solely about parity and ensuring all public safety professionals who sacrifice so much and put their personal safety at risk every day for public safety in ND, receive the same benefits, including retirement. This bill is one of the most important pieces of legislation from the DOCR's perspective this session. In addition, Governor Armstrong included funding for this bill in his budget recommendation.

Corrections is very difficult and dangerous work. According to the 2011 Florida Mortality Study by the Florida State Fraternal Order of Police, on average, law enforcement and correctional officers die 12 years earlier than the general population. In other words, law enforcement and correctional officers live to around 62 years compared to 74 years for the general population. Other studies show a life expectancy of 59 for law enforcement and correctional officers compared to 77 for general population. Given their shorter life expectancy, public safety professionals, which includes state correctional officers, do not have a lot of time to enjoy a much-earned retirement. In addition, state correctional officers

also work in dangerous environments that put their health at risk, just like law enforcement officers and correctional officers in county and regional jails in ND. Studies show that correctional officers experience depression (25% vs. 7%), PTSD (27% vs. 4%), and suicide (7% vs. 5%) at much higher rates than the national population. DOCR correctional officers work hard and sacrifice to keep our communities safe every day by working in our state's prisons.

We anticipate between 450 and 500 total DOCR team members moving into the public safety retirement plan if this bill passes. Only positions which require a current correctional officer certification or equivalent, would be eligible for inclusion. Chairman Schauer and members of the House Government and Veterans Affairs Committee, we ask that you support House Bill 1274 which adds state or DOCR correctional officers to the public safety retirement plan. I will stand for questions.

## **TESTIMONY OF DERRICK HOHBEIN**

### **House Bill 1274 – Public Safety Expansion to Include State**

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 1274, which expands the eligibility in the Public Safety Plan to include correctional officers employed by a governmental unit. 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 1274 expands the eligibility in the State Public Safety Plan to include state correctional officers, 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 correctional officers 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 performed an analysis based on the July 1, 2023 valuation which estimates that the bill would move approximately 442 individuals from the Main Plan into the State Public Safety Plan resulting in an actuarial gain to the Main System of \$12.2 Million and an actuarial loss to the State Public Safety System of \$17.4 Million. In addition, the ongoing employer contribution rate across all employers of the State Public Safety Plan would need to be increased 0.12% to fund the increased eligibility.

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 1274 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 40 during the interim session).

We do have an amendment for the bill (just a technical correction) as Page 1, line 16, should refer to subsection 14 instead of subsection 13. 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. This concludes my testimony, and I'd be happy to answer any questions the committee may have.



June 12, 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. 25.0040.01000 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. 25.0040.01000 allows correctional officers 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 040 on NDPERS**

NDPERS provided data for correctional officers employed by the State of North Dakota, as defined in Bill 040. 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 442 members. It was determined that 2 of those records already participate in a Public Safety Plan. An additional 106 members were found to not be in the July 1, 2023 actuarial valuation data. The remaining 334 members transferring to the State Public Safety Employees group are currently in the Main System.

The following table provides information on the counts, average age and service, and average salary before and after the provisions of Bill 040:

	Current Members Public Safety with Prior Service (State Public Safety Employees Group)	Bill 040 Public Safety with Prior Service (State Public Safety Employees Group)
Count	181	515
Average Age	41.2	41.5
Average Benefit Service	10.0	9.5
Average Salary	\$68,073	\$57,273

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 peace officers 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 1,559, including 515 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 334 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 25.0040.01000	Difference
Main System Actuarial Accrued Liabilities	\$ 5,559,270,755	\$ 5,523,917,498	\$ (35,353,257)
Main System Actuarial Value of Assets	\$ 3,683,545,963	\$ 3,660,454,939	\$ (23,091,024)
Main System Normal Cost	\$ 152,758,636	\$ 150,814,304	\$ (1,944,332)
Main System Funded Ratio	66.26%	66.27%	0.01%
Public Safety With Prior Main System Service Actuarial Accrued Liabilities	\$ 187,025,504	\$ 227,528,752	\$ 40,503,248
Public Safety With Prior Main System Service Actuarial Value of Assets	\$ 128,273,097	\$ 151,364,121	\$ 23,091,024
Public Safety With Prior Main System Service Normal Cost	\$ 12,179,130	\$ 14,641,189	\$ 2,462,059
Public Safety With Prior Main System Service Funded Ratio	68.59%	66.53%	-2.06%

**Actuarial Impact of Bill 040 on State Public Safety Employees Actuarially Determined Employer Contribution (ADEC)**

A separate ADEC 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.

The impact on Normal Cost for the State Public Safety Employees Group is shown in Table I(b). As of July 1, 2023, the total Normal Cost of the State Public Safety Employees group initially decreases from 13.90% to 13.57% of projected compensation, due to the expansion of the group.

Bill 040 also increases the unfunded liability of the plan, which leads to an increase in the amortized unfunded liability portion of the ADEC as of July 1, 2023. However, the covered payroll of the group is also expected to increase. The amortized unfunded liability portion of the ADEC as a percentage of payroll increased from 4.34% to 4.68%, or 0.34%. Overall, the estimated impact of Bill 040 on the Public Safety With Prior Service Plan ADEC as of July 1, 2023 is an increase of 0.12% of pay, from 12.37% of pay to 12.49% of pay.

## **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 040 will enhance retirement benefits for correctional officers 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 correctional officers who transfer into the Public Safety System.

- Benefits Equity and Group Integrity

Under the Bill, correctional officers 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 correctional officers to be counted under the rules applicable to correctional officers. 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 correctional officers to describe the new retirement rules applicable to them, including the normal retirement age and early retirement age.



### **Summary**

- Correctional officers 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.
- Correctional officers 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 12, 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



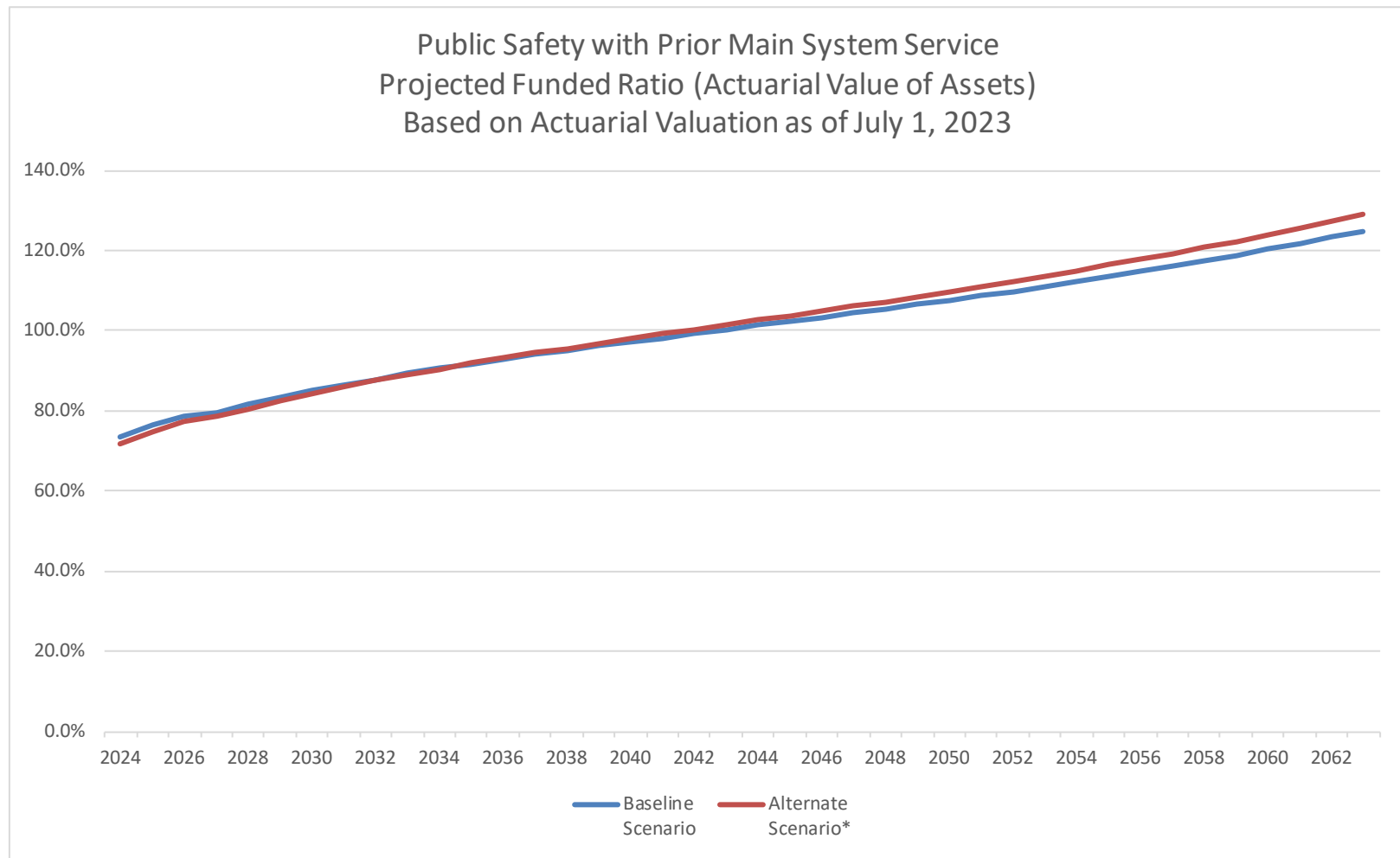
Bonita J. Wurst, ASA, EA, MAAA, FCA  
Senior Consultant



Abra D. Hill, ASA, MAAA, FCA  
Consultant

cc: Rebecca Fricke, NDPERS  
Joshua Murner, GRS





\* Alternate Scenario is based on additional data provided by NDPERS for Bill 25.0040.01000

**Projected Funded Ratios under Bill 040  
Based on July 1, 2023, Actuarial Valuation**

Year	Main System		Public Safety with Prior Main System Service	
	Baseline Scenario	Alternate Scenario*	Baseline Scenario	Alternate Scenario*
2024	68.2%	68.2%	73.7%	71.6%
2025	68.6%	68.6%	76.4%	74.6%
2026	68.0%	67.9%	78.8%	77.2%
2027	69.0%	69.0%	79.6%	78.4%
2028	69.9%	69.8%	81.5%	80.5%
2029	70.8%	70.7%	83.3%	82.5%
2030	71.6%	71.5%	84.9%	84.3%
2031	72.5%	72.4%	86.4%	86.0%
2032	73.2%	73.1%	87.9%	87.5%
2033	74.0%	73.9%	89.2%	89.0%
2034	74.6%	74.5%	90.5%	90.5%
2035	75.3%	75.3%	91.7%	91.8%
2036	75.9%	75.9%	92.9%	93.1%
2037	76.6%	76.5%	94.0%	94.4%
2038	77.1%	77.1%	95.1%	95.6%
2039	77.7%	77.7%	96.2%	96.8%
2040	78.3%	78.3%	97.2%	98.0%
2041	79.0%	78.9%	98.2%	99.2%
2042	79.6%	79.5%	99.2%	100.3%
2043	80.3%	80.3%	100.3%	101.4%
2044	81.1%	81.0%	101.3%	102.6%
2045	81.9%	81.8%	102.3%	103.7%
2046	82.8%	82.7%	103.3%	104.9%
2047	83.7%	83.7%	104.3%	106.0%
2048	84.8%	84.7%	105.4%	107.2%
2049	86.0%	85.9%	106.4%	108.4%
2050	87.3%	87.2%	107.5%	109.7%
2051	88.8%	88.8%	108.6%	110.9%
2052	90.5%	90.4%	109.8%	112.2%
2053	92.4%	92.4%	111.0%	113.6%
2054	94.6%	94.6%	112.2%	114.9%
2055	97.1%	97.1%	113.4%	116.3%
2056	100.0%	100.0%	114.7%	117.8%
2057	103.3%	103.4%	116.0%	119.3%
2058	103.7%	103.7%	117.4%	120.8%
2059	104.1%	104.2%	118.8%	122.3%
2060	104.6%	104.6%	120.2%	124.0%
2061	105.1%	105.2%	121.7%	125.6%
2062	105.7%	105.8%	123.3%	127.3%
2063	106.4%	106.4%	124.9%	129.1%

\* Alternate Scenario is based on additional data provided by NDPERS for Bill 25.0040.01000



**Projected Employer Normal Cost Rates under Bill 040  
(Includes Administrative Expense Component)  
Based on July 1, 2023, Actuarial Valuation**

Year	Main System		Public Safety with Prior Main System Service		Public Safety with Prior Main System Service State Employees Group Only	
	Baseline Scenario	Alternate Scenario*	Baseline Scenario	Alternate Scenario*	Baseline Scenario	Alternate Scenario*
2024	4.83%	4.85%	7.81%	7.71%	7.79%	7.49%
2025	4.48%	4.49%	7.78%	7.67%	7.70%	7.41%
2026	4.17%	4.18%	7.75%	7.64%	7.63%	7.35%
2027	3.89%	3.90%	7.72%	7.61%	7.57%	7.31%
2028	3.64%	3.65%	7.69%	7.58%	7.53%	7.27%
2029	3.40%	3.42%	7.66%	7.54%	7.49%	7.23%
2030	3.18%	3.19%	7.63%	7.51%	7.45%	7.20%
2031	2.97%	2.98%	7.60%	7.49%	7.42%	7.17%
2032	2.76%	2.77%	7.57%	7.46%	7.39%	7.14%
2033	2.56%	2.57%	7.55%	7.44%	7.36%	7.12%
2034	2.37%	2.38%	7.52%	7.41%	7.32%	7.10%
2035	2.19%	2.20%	7.49%	7.39%	7.28%	7.07%
2036	2.02%	2.03%	7.47%	7.36%	7.25%	7.05%
2037	1.86%	1.87%	7.44%	7.34%	7.22%	7.03%
2038	1.70%	1.71%	7.41%	7.32%	7.20%	7.02%
2039	1.55%	1.56%	7.39%	7.30%	7.18%	7.01%
2040	1.41%	1.42%	7.37%	7.27%	7.16%	7.00%
2041	1.28%	1.29%	7.34%	7.25%	7.13%	6.98%
2042	1.16%	1.16%	7.31%	7.23%	7.11%	6.96%
2043	1.04%	1.04%	7.29%	7.21%	7.08%	6.95%
2044	0.93%	0.93%	7.26%	7.18%	7.06%	6.93%
2045	0.83%	0.83%	7.24%	7.17%	7.03%	6.92%
2046	0.73%	0.73%	7.22%	7.15%	7.00%	6.90%
2047	0.64%	0.64%	7.21%	7.13%	6.98%	6.89%
2048	0.56%	0.56%	7.20%	7.12%	6.95%	6.88%
2049	0.48%	0.49%	7.19%	7.12%	6.93%	6.86%
2050	0.42%	0.42%	7.18%	7.11%	6.91%	6.85%
2051	0.36%	0.36%	7.18%	7.10%	6.89%	6.84%
2052	0.30%	0.30%	7.17%	7.10%	6.87%	6.83%
2053	0.25%	0.25%	7.17%	7.10%	6.86%	6.82%
2054	0.21%	0.21%	7.17%	7.10%	6.85%	6.82%
2055	0.17%	0.17%	7.17%	7.10%	6.84%	6.81%
2056	0.14%	0.14%	7.17%	7.10%	6.83%	6.81%
2057	0.11%	0.11%	7.17%	7.10%	6.83%	6.80%
2058	0.09%	0.09%	7.17%	7.09%	6.82%	6.80%
2059	0.07%	0.07%	7.17%	7.09%	6.82%	6.80%
2060	0.06%	0.06%	7.17%	7.09%	6.82%	6.80%
2061	0.04%	0.04%	7.17%	7.09%	6.82%	6.80%
2062	0.03%	0.03%	7.17%	7.09%	6.81%	6.79%
2063	0.03%	0.03%	7.16%	7.09%	6.81%	6.79%

\* Alternate Scenario is based on additional data provided by NDPERS for Bill 25.0040.01000

**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

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*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.<sup>1</sup> 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**

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<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>2</sup> 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,<sup>3</sup> 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

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<sup>3</sup> 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**

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

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

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1274  
2/20/2025

Relating to membership of the public employees retirement system public safety retirement plan.
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10:29 a.m. Chairman Schauer opened the meeting.

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

### Discussion Topics:

- Committee action
- Proposed amendments relating to technical corrections

10:30 a.m. Derrick Hohbein, Chief Financial Officer and Chief Operating Officer of NDPERS, testified and answered questions.

10:35 a.m. Representative Vetter moved to amend the bill relating to technical corrections.

10:35 a.m. Vice-Chairman Satrom seconded the motion.

10:36 a.m. Voice vote passed.

10:36 a.m. Representative Schneider moved a Do Pass as amended.

10:36 a.m. Representative Grindberg seconded the motion.

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

10:39 a.m. Motion passed 7-4-2.

Representative Grindberg will carry the bill.

10:40 a.m. Chairman Schauer closed the meeting.

*Jackson Toman, Committee Clerk*

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO**

**HOUSE BILL NO. 1274**

Introduced by

Representatives Porter, Dockter, Heinert, Satrom, Schauer, Karls

Senators Cleary, Roers, Axtman, Dever

2-20-25

JK 10/17

1 A BILL for an Act to amend and reenact sections 54-52-01, 54-52-02.15, 54-52-06.4, and  
2 54-52-17 of the North Dakota Century Code, relating to membership of the public employees  
3 retirement system public safety retirement plan.

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

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

7 **54-52-01. Definition of terms.**

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

- 9 1. "Account balance" means the total contributions made by the employee, vested  
10 employer contributions under section 54-52-11.1, the vested portion of the vesting  
11 fund as of June 30, 1977, and interest credited thereon at the rate established by the  
12 board.
- 13 2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any  
14 person designated by a participating member to receive benefits.
- 15 3. "Correctional officer" means a participating member who is employed as a correctional  
16 officer by a ~~political subdivision~~ governmental unit and, notwithstanding  
17 subsection 13-14, for an individual employed on or after the effective date of this Act, is  
18 employed at least thirty-two hours per week and at least twenty weeks each year of  
19 employment. A correctional officer who is a participating member of the public safety  
20 retirement plan created by this chapter who begins employment on or after the

1 effective date of this Act is ineligible to participate concurrently in any other retirement  
2 plan administered by the public employees retirement system.

- 3 4. "Deferred member" means a participating member who is not actively participating in  
4 the main plan under this chapter and who has an account intact in the main plan under  
5 this chapter.
- 6 5. "Eligible employee", except as otherwise provided under section 54-52-02.15, means  
7 a permanent employee who meets all of the eligibility requirements set by this chapter  
8 and who is eighteen years or more of age. The term includes appointive and elective  
9 officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching  
10 employees of the superintendent of public instruction, including the superintendent of  
11 public instruction, who elect to transfer from the teachers' fund for retirement to the  
12 public employees retirement system under section 54-52-02.13, and employees of the  
13 state board for career and technical education who elect to transfer from the teachers'  
14 fund for retirement to the public employees retirement system under section  
15 54-52-02.14. The term does not include nonclassified state employees who elected  
16 under section 54-52.6-02 to become members of the retirement plan established  
17 under chapter 54-52.6. The term does include employees of the judicial branch and  
18 employees of the board of higher education and state institutions under the jurisdiction  
19 of the board of higher education.
- 20 6. "Employee" means any individual employed by a governmental unit, whose  
21 compensation is paid out of the governmental unit's funds, or funds controlled or  
22 administered by a governmental unit, or paid by the federal government through any of  
23 its executive or administrative officials; licensed employees of a school district means  
24 those employees eligible to participate in the teachers' fund for retirement who, except  
25 under subsection 2 of section 54-52-17.2, are not eligible employees under this  
26 chapter.
- 27 7. "Employer" means a governmental unit.
- 28 8. "Firefighter" means a participating member who is employed as a firefighter by a  
29 political subdivision and, notwithstanding subsection 13, for an individual employed  
30 after July 31, 2017, is employed at least thirty-two hours per week and at least twenty  
31 weeks each year of employment. A firefighter who is a participating member of the law



- 1           ~~enforcement~~public safety retirement plan created by this chapter who begins  
2           employment after July 31, 2017, is ineligible to participate concurrently in any other  
3           retirement plan administered by the public employees retirement system. The term  
4           does not include a firefighter employee of the North Dakota national guard.
- 5       9.   "Funding agent" or "agents" means an investment firm, trust bank, or other financial  
6           institution which the retirement board may select to hold and invest the employers' and  
7           members' contributions.
- 8       10. "Governmental unit" means the state of North Dakota, except the highway patrol for  
9           members of the retirement plan created under chapter 39-03.1, or a participating  
10          political subdivision of the state.
- 11      11. "National guard security officer or firefighter" means a participating member who is:  
12          a.   A security police employee of the North Dakota national guard; or  
13          b.   A firefighter employee of the North Dakota national guard.
- 14      12. "Participating member" means an eligible employee who through payment into the  
15          plan has established a claim against the plan.
- 16      13. "Peace officer" means a participating member who is a peace officer as defined in  
17          section 12-63-01 and is employed as a peace officer by the state, except by the  
18          highway patrol for members of the retirement plan created under chapter 39-03.1, or is  
19          employed by a political subdivision and, notwithstanding subsection 14, for persons  
20          employed after August 1, 2005, is employed thirty-two hours or more per week and at  
21          least twenty weeks each year of employment. A peace officer who is a participating  
22          member of the ~~law enforcement~~public safety retirement plan created by this chapter  
23          who begins employment after August 1, 2005, is ineligible to participate concurrently in  
24          any other retirement plan administered by the public employees retirement system.
- 25      14. "Permanent employee" means an employee whose services are not limited in duration  
26          and who is filling an approved and regularly funded position in an eligible  
27          governmental unit, and is employed twenty hours or more per week and at least  
28          twenty weeks each year of employment.
- 29      15. "Prior service" means service or employment before July 1, 1966.
- 30      16. "Prior service credit" means such credit toward a retirement benefit as the retirement  
31          board may determine under the provisions of this chapter.

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

27 **SECTION 2. AMENDMENT.** Section 54-52-02.15 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **54-52-02.15. Public employees retirement system main plan - Closure to new hires -**  
30 **Multiple plan membership.**

- 31 1. Under this section "eligible employee" means a permanent employee who:



- 1 a. Meets all the eligibility requirements set by this chapter;
- 2 b. Is at least eighteen years of age;
- 3 c. Becomes a participating member after December 31, 2024; and
- 4 d. Is not eligible to participate in the ~~law enforcement~~public safety plan, judges' plan,
- 5 highway patrol plan, teachers' fund for retirement plan, or alternative retirement
- 6 program established under section 15-10-17 for university system employees.
- 7 2. Effective January 1, 2025, the public employees retirement system defined benefit
- 8 main plan maintained for employees is closed to new eligible employees. However, an
- 9 employee who becomes a participating or deferred member under this chapter before
- 10 January 1, 2025, remains in the defined benefit retirement plan under this chapter,
- 11 regardless of being rehired after December 31, 2024.
- 12 3. Except as otherwise provided under this section, effective January 1, 2025, an eligible
- 13 employee who begins employment with an employer shall participate in the defined
- 14 contribution retirement plan under chapter 54-52.6 as provided under section
- 15 54-52.6-02.1.
- 16 4. This section does not impact an employee to the extent the employee is a participating
- 17 member in one or more of the following enumerated retirement plans: ~~law~~
- 18 ~~enforcement~~public safety plan, judges' plan, highway patrol plan, teachers' fund for
- 19 retirement plan, or alternative retirement program established under section 15-10-17
- 20 for university system employees.
- 21 a. A participating or deferred member in the defined contribution retirement plan
- 22 under chapter 54-52.6 who becomes eligible to participate in a plan enumerated
- 23 under this subsection is eligible to participate in the retirement plan enumerated
- 24 under this subsection.
- 25 b. A participating member of a retirement plan enumerated under this subsection
- 26 who becomes an eligible employee is not eligible to participate in the defined
- 27 benefit retirement plan under this chapter but instead participates in the defined
- 28 contribution retirement plan under chapter 54-52.6. However, this subdivision
- 29 does not apply to an individual who before January 1, 2025, is a participating or a
- 30 deferred member under this chapter, as that individual continues to participate in
- 31 the defined benefit retirement plan under this chapter.

1        5. The board shall adopt rules to implement this section.

2        **SECTION 3. AMENDMENT.** Section 54-52-06.4 of the North Dakota Century Code is  
3 amended and reenacted as follows:

4        **54-52-06.4. Contribution by peace officers and correctional officers employed by the**  
5 **state or security officers employed by the national guard - Employer contribution.**  
6 **(Retroactive application - [See note](#))**

- 7        1. a. Each peace officer employed by the bureau of criminal investigation who is a  
8 member of the public employees retirement system is assessed and shall pay  
9 monthly four percent of the employee's monthly salary. Peace officer  
10 contributions increase by one percent of the member's monthly salary beginning  
11 with the monthly reporting period of January 2012; with an additional increase of  
12 one percent, beginning with the reporting period of January 2013; with an  
13 additional increase of one percent, beginning with the reporting period of  
14 January 2024; and with an additional increase of one percent, beginning with the  
15 reporting period of January 2025.
- 16        b. Each correctional officer and peace officer employed by the state, other than a  
17 peace officer employed by the bureau of criminal investigation, who is a member  
18 of the public employees retirement system is assessed and shall pay six percent  
19 of the employee's monthly salary.
- 20        c. Effective August 1, 2015, each national guard security officer who is a member of  
21 the public employee's retirement system is assessed and monthly shall pay  
22 six percent of the employee's monthly salary. National guard security officer  
23 contributions decrease by one-half of one percent of the member's monthly  
24 salary beginning with the monthly reporting period of January 2016.
- 25        d. The assessment under this subsection must be deducted and retained out of the  
26 employee's salary in equal monthly installments.
- 27        2. The employer of a correctional officer or peace officer employed by the state or a  
28 national guard security officer shall contribute an amount determined by the board to  
29 be actuarially required to support the level of benefits specified in section 54-52-17.  
30 The employer's contribution must be paid from funds appropriated for salary or from  
31 any other funds available for such purposes. If the correctional officer's, peace



1 officer's, or security officer's assessment is paid by the employer under subsection 3 of  
2 section 54-52-05, the employer shall contribute, in addition, an amount equal to the  
3 required correctional officer's, peace officer's, or security officer's assessment.

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

6 **54-52-17. Formulation of plan. (Retroactive application - See note)**

7 Participating members shall receive benefits according to this section and according to  
8 rules adopted by the board, not inconsistent with this chapter. ~~No person~~ An individual is not  
9 entitled to receive a prior service benefit if the ~~person~~ individual was not continuously employed  
10 by a governmental unit in North Dakota for a period of not less than two years immediately ~~prior~~  
11 ~~to~~ preceding eligibility for retirement.

- 12 1. Participating members shall receive credit for full-time employment or its equivalent  
13 from the date they attain eligibility until their normal retirement date, postponed  
14 retirement date, or early retirement date, as defined in this section. Part-time  
15 employment will be recognized as full-time employment on a prorated basis as the  
16 board may prescribe.
- 17 2. Retirement benefits are calculated from the participating member's final average  
18 salary, which is the average of the highest salary received by the member for any  
19 thirty-six months employed during the last one hundred twenty months of employment.  
20 For members who terminate employment on or after August 1, 2010, final average  
21 salary is the average of the highest salary received by the member for any thirty-six  
22 months employed during the last one hundred eighty months of employment. For  
23 members who terminate employment between July 31, 2005, and August 1, 2010, final  
24 average salary is the average of the highest salary received by the member for any  
25 thirty-six months employed during the period for which the board has appropriate and  
26 accurate salary records on the board's electronic database, but that period may not be  
27 more than the last one hundred eighty months of employment. For members who  
28 terminate employment after December 31, 2019, final average salary is the higher of  
29 the final average salary calculated on December 31, 2019, or the average salary  
30 earned in the three highest periods of twelve consecutive months employed during the  
31 last one hundred eighty months of employment. Months without earnings are excluded

1 for the purpose of computing an average. If the participating member has worked for  
2 less than thirty-six months at the normal retirement date, the final average salary is the  
3 average salary for the total months of employment.

4 3. Retirement dates are defined as follows:

5 a. Normal retirement date, except for a national guard security officer or firefighter, a  
6 ~~firefighter employed by a political subdivision, a~~correctional officer or peace  
7 officer employed by the state, or a firefighter, peace officer, or correctional officer  
8 employed by a political subdivision, is:

- 9 (1) The first day of the month next following the month in which the member  
10 attains the age of sixty-five years; or  
11 (2) When the member has a combined total of years of service credit and years  
12 of age equal to eighty-five and has not received a retirement benefit under  
13 this chapter.

14 b. Normal retirement date for members first enrolled after December 31, 2015,  
15 except for a national guard security officer or firefighter, a ~~firefighter employed by~~  
16 ~~a political subdivision, a~~correctional officer or peace officer employed by the  
17 state, a firefighter, peace officer, or correctional officer employed by a political  
18 subdivision, or a supreme court or district court judge, is:

- 19 (1) The first day of the month next following the month in which the member  
20 attains the age of sixty-five years; or  
21 (2) When the member has a combined total of years of service credit and years  
22 of age equal to ninety and the member attains a minimum age of sixty and  
23 has not received a retirement benefit under this chapter.

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

- 25 (1) The first day of the month next following the month in which the national  
26 guard security officer or firefighter attains the age of fifty-five years and has  
27 completed at least three eligible years of employment; or  
28 (2) When the national guard security officer or firefighter has a combined total  
29 of years of service credit and years of age equal to eighty-five and has not  
30 received a retirement benefit under this chapter.



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- 1 d. Normal retirement date for a peace officer, firefighter, or correctional officer  
2 employed by a political subdivision is:
- 3 (1) The first day of the month next following the month in which the peace  
4 officer, firefighter, or correctional officer attains the age of fifty-five years and  
5 has completed at least three eligible years of employment; or
- 6 (2) When the peace officer, firefighter, or correctional officer has a combined  
7 total of years of service credit and years of age equal to eighty-five and has  
8 not received a retirement benefit under this chapter.
- 9 e. (1) Normal retirement date for a peace officer employed by the bureau of  
10 criminal investigation is:
- 11 (a) [1] For a member employed before August 1, 2023, the first day of  
12 the month next following the month in which the peace officer  
13 attains the age of fifty-five years and has completed at least  
14 three eligible years of employment; and
- 15 [2] For a member employed after July 31, 2023, the first day of the  
16 month next following the month in which the peace officer attains  
17 the age of fifty-five years and has completed at least ten eligible  
18 years of employment; or
- 19 (b) When the peace officer has a combined total of years of service credit  
20 and years of age equal to eighty-five and has not received a  
21 retirement benefit under this chapter.
- 22 (2) Normal retirement date for a correctional officer or peace officer employed  
23 by the state, other than a peace officer employed by the bureau of criminal  
24 investigation, is:
- 25 (a) The first day of the month next following the month in which the  
26 correctional officer or peace officer attains the age of fifty-five years  
27 and has completed at least three eligible years of employment; or
- 28 (b) When the correctional officer or peace officer has a combined total of  
29 years of service credit and years of age equal to eighty-five and has  
30 not received a retirement benefit under this chapter.

- 1 f. Postponed retirement date is the first day of the month next following the month  
2 in which the member, on or after July 1, 1977, actually severs or has severed the  
3 member's employment after reaching the normal retirement date.
- 4 g. (1) Early retirement date, except for a national guard security officer or  
5 firefighter, a firefighter, peace officer, or correctional officer employed by a  
6 political subdivision, or a correctional officer or peace officer employed by  
7 the state, is the first day of the month next following the month in which the  
8 member attains the age of fifty-five years and has completed three years of  
9 eligible employment.
- 10 (2) For a national guard security officer or firefighter, early retirement date is the  
11 first day of the month next following the month in which the national guard  
12 security officer or firefighter attains the age of fifty years and has completed  
13 at least three years of eligible employment.
- 14 (3) For a correctional officer or peace officer employed by the state, other than  
15 a peace officer employed by the bureau of criminal investigation, or a  
16 firefighter, peace officer, or correctional officer employed by a political  
17 subdivision, early retirement date is the first day of the month next following  
18 the month in which the peace officer, firefighter, or correctional officer attains  
19 the age of fifty years and has completed at least three years of eligible  
20 employment.
- 21 (4) For a peace officer employed by the bureau of criminal investigation, early  
22 retirement date is the first day of the month next following the month in  
23 which the peace officer attains the age of fifty years and has completed at  
24 least three years of eligible employment.
- 25 h. Disability retirement date is the first day of the month after a member becomes  
26 permanently and totally disabled, according to medical evidence called for under  
27 the rules of the board, and has completed at least one hundred eighty days of  
28 eligible employment. For supreme and district court judges, permanent and total  
29 disability is based solely on a judge's inability to perform judicial duties arising out  
30 of physical or mental impairment, as determined pursuant to rules adopted by the  
31 board or as provided by subdivision a of subsection 3 of section 27-23-03.



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- 1 (1) A member is eligible to receive disability retirement benefits only if the
- 2 member became disabled during the period of eligible employment and
- 3 applies for disability retirement benefits within twelve months of the date the
- 4 member terminates employment.
- 5 (2) A member is eligible to continue to receive disability benefits as long as the
- 6 permanent and total disability continues and the member submits the
- 7 necessary documentation and undergoes medical testing required by the
- 8 board, or for as long as the member participates in a rehabilitation program
- 9 required by the board, or both. If the board determines a member no longer
- 10 meets the eligibility definition, the board may discontinue the disability
- 11 retirement benefit. The board may pay the cost of any medical testing or
- 12 rehabilitation services the board deems necessary and these payments are
- 13 appropriated from the retirement fund for those purposes. A member's
- 14 receipt of disability benefits under this section is limited to receipt from the
- 15 fund to which the member was actively contributing at the time the member
- 16 became disabled.
- 17 4. The board shall calculate retirement benefits as follows:
- 18 a. Normal retirement benefits for all retirees, except supreme and district court
- 19 judges, and peace officers employed by the bureau of criminal investigation, ~~and~~
- 20 ~~other peace officers employed by the state~~, reaching normal retirement date
- 21 equal an annual amount, payable monthly, comprised of a service benefit and a
- 22 prior service benefit, as defined in this chapter, which is determined as follows:
- 23 (1) For members first enrolled:
- 24 (a) Before January 1, 2020, service benefit equals two percent of final
- 25 average salary multiplied by the number of years of service
- 26 employment.
- 27 (b) After December 31, 2019, service benefit equals one and seventy-five
- 28 hundredths percent of final average salary multiplied by the number of
- 29 years of service employment.
- 30 (2) Prior service benefit equals two percent of final average salary multiplied by
- 31 the number of years of prior service employment.

- 1           b. Normal retirement benefits for all supreme and district court judges under the
- 2           public employees retirement system reaching normal retirement date equal an
- 3           annual amount, payable monthly, comprised of a benefit as defined in this
- 4           chapter, determined as follows:
- 5           (1) Benefits must be calculated from the time of appointment or election to the
- 6           bench and must equal three and one-half percent of final average salary
- 7           multiplied by the first ten years of judicial service, two and eighty hundredths
- 8           percent of final average salary multiplied by the second ten years of judicial
- 9           service, and one and one-fourth percent of final average salary multiplied by
- 10          the number of years of judicial service exceeding twenty years.
- 11          (2) Service benefits must include, in addition, an amount equal to the percent
- 12          specified in subdivision a of final average salary multiplied by the number of
- 13          years of nonjudicial employee service and employment.
- 14          c. Normal retirement benefits for a peace officer employed by the bureau of criminal
- 15          investigation reaching the normal retirement date equals an annual amount,
- 16          payable monthly, comprised of a service benefit and a prior service benefit
- 17          determined as follows:
- 18          (1) The first twenty years of credited service multiplied by three percent of final
- 19          average salary.
- 20          (2) For years in excess of twenty years of credited service multiplied by one
- 21          and seventy-five hundredths percent of final average salary.
- 22          ~~d. Normal retirement benefits for a peace officer employed by the state, other than~~
- 23          ~~by the bureau of criminal investigation, reaching the normal retirement date~~
- 24          ~~equals an annual amount, payable monthly, comprised of a service benefit and a~~
- 25          ~~prior service benefit determined as follows:~~
- 26          ~~(1) For members first enrolled:~~
- 27                  ~~(a) Before January 1, 2020, service benefit equals two percent of final~~
- 28                  ~~average salary multiplied by the number of years of service~~
- 29                  ~~employment.~~



1                   (b) ~~After December 31, 2019, service benefit equals one and seventy-five~~  
2                   ~~hundredths percent of final average salary multiplied by the number of~~  
3                   ~~years of service employment.~~

4                   (2) ~~Prior service benefit equals two percent of final average salary multiplied by~~  
5                   ~~the number of years of prior service employment.~~

6           e. Postponed retirement benefits are calculated as for single life benefits for those  
7           members who retired on or after July 1, 1977.

8           f.e. Early retirement benefits are calculated as for single life benefits accrued to the  
9           date of termination of employment, but must be actuarially reduced to account for  
10           benefit payments beginning before the normal retirement date, as determined  
11           under subsection 3. Except for a national guard security officer or firefighter, a  
12           firefighter, ~~peace officer, or correctional officer~~ employed by a political  
13           subdivision, a peace officer or correctional officer employed by ~~the state~~  
14           governmental unit, or a supreme court or district court judge, early retirement  
15           benefits for members first enrolled after December 31, 2015, are calculated for  
16           single life benefits accrued to the date of termination of employment, but must be  
17           reduced by fixed rate of eight percent per year to account for benefit payments  
18           beginning before the normal retirement date. A retiree, other than a supreme or  
19           district court judge, is eligible for early retirement benefits only after having  
20           completed three years of eligible employment. A supreme or district court judge  
21           retiree is eligible for early retirement benefits only after having completed five  
22           years of eligible employment.

23           g.f. Except for supreme and district court judges, disability retirement benefits are  
24           twenty-five percent of the member's final average salary. Disability retirement  
25           benefits for supreme and district court judges are seventy percent of final  
26           average salary reduced by the member's primary social security benefits and by  
27           any workforce safety and insurance benefits paid. The minimum monthly  
28           disability retirement benefit under this section is one hundred dollars.

29           5. Upon termination of employment after completing three years of eligible employment,  
30           except for supreme and district court judges, who must complete five years of eligible  
31           employment, but before normal retirement date, a member who does not elect to

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1 receive early retirement benefits is eligible to receive deferred vested retirement  
2 benefits payable commencing on the member's normal retirement date in one of the  
3 optional forms provided in subsection 9. Members who have delayed or inadvertently  
4 failed to apply for retirement benefits to commence on their normal retirement date  
5 may choose to receive either a lump sum payment equal to the amount of missed  
6 payments, or an actuarial increase to the form of benefit the member has selected,  
7 which increase must reflect the missed payments.

8 6. If before retiring a member dies after completing three years of eligible employment,  
9 except for supreme and district court judges, who must have completed five years of  
10 eligible employment, the board shall pay the member's account balance to the  
11 member's designated beneficiary as provided in this subsection. If the member has  
12 designated an alternate beneficiary with the surviving spouse's written consent, the  
13 board shall pay the member's account balance to the named beneficiary. If the  
14 member has named more than one primary beneficiary, the board shall pay the  
15 member's account balance to the named primary beneficiaries in the percentages  
16 designated by the member or, if the member has not designated a percentage for the  
17 beneficiaries, in equal percentages. If one or more of the primary beneficiaries has  
18 predeceased the member, the board shall pay the predeceased beneficiary's share to  
19 the remaining primary beneficiaries. If any beneficiary survives the member, yet dies  
20 before distribution of the beneficiary's share, the beneficiary must be treated as if the  
21 beneficiary predeceased the member. If there are no remaining primary beneficiaries,  
22 the board shall pay the member's account balance to the contingent beneficiaries in  
23 the same manner. If there are no remaining designated beneficiaries, the board shall  
24 pay the member's account balance to the member's estate. If the member has not  
25 designated an alternate beneficiary or the surviving spouse is the beneficiary, the  
26 surviving spouse of the member may select a form of payment as follows:

27 a. If the member was a supreme or district court judge, the surviving spouse may  
28 select one of the following optional forms of payment:

29 (1) A lump sum payment of the member's retirement account as of the date of  
30 death.



- 1                   (2)   Payments as calculated for the deceased member as if the member was of
- 2                               normal retirement age at the date of death, payable until the spouse dies.
- 3       b.   The surviving spouse of all other members may select one of the following
- 4               options:
- 5               (1)   A lump sum payment of the member's retirement account as of the date of
- 6                               death.
- 7               (2)   Payment of a monthly retirement benefit equal to fifty percent of the
- 8                               deceased member's accrued single life retirement benefits until the spouse
- 9                               dies.
- 10              (3)   If the member dies on or after the member's normal retirement date, the
- 11                               payment of a monthly retirement benefit equal to an amount that would have
- 12                               been paid to the surviving spouse if the member had retired on the day of
- 13                               the member's death and had selected a one hundred percent joint and
- 14                               survivor annuity, payable until the spouse dies. A surviving spouse who
- 15                               received a benefit under this subsection as of July 31, 1995, is entitled to
- 16                               the higher of that person's existing benefit or the equivalent of the accrued
- 17                               benefit available under the one hundred percent joint and survivor provision
- 18                               as if the deceased member were of normal retirement age, with the increase
- 19                               payable beginning August 1, 1995.
- 20       7.   If a member not coming under the provisions of subsection 6 terminates employment
- 21               because of death, permanent and total disability, or any voluntary or involuntary
- 22               reason prior to retirement, the member or the member's designated beneficiary is
- 23               entitled to the member's account balance at termination. The board automatically shall
- 24               refund a member's account balance if the member has completed less than three
- 25               years of eligible employment, has an account balance of less than one thousand
- 26               dollars, and was not a supreme or district court judge. If the member was a supreme
- 27               or district court judge, the board automatically shall refund a member's account
- 28               balance if the member completed less than five years of eligible employment. A
- 29               member may waive the refund if the member submits a written statement to the board,
- 30               within thirty days after termination, requesting that the member's account balance
- 31               remain in the fund.

- 1       8.   The surviving spouse of a member receiving retirement benefits must be the  
2       member's primary beneficiary unless there is no surviving spouse or the surviving  
3       spouse designates an alternate beneficiary in writing. If a member receiving retirement  
4       benefits or the member's surviving spouse receiving retirement benefits dies before  
5       the total amount of benefits paid to either or both equals the amount of the member's  
6       account balance at retirement, the difference must be paid to the named beneficiary of  
7       the recipient or, if there is no named beneficiary, to the recipient's estate. A benefit  
8       payment owed to the member, surviving spouse, or alternate beneficiary which was  
9       not paid before the death of the member, surviving spouse, or alternate beneficiary  
10      must be paid to the named beneficiary of the recipient or, if there is no named  
11      beneficiary, to the recipient's estate.
- 12      9.   The board shall adopt rules providing for the receipt of retirement benefits in the  
13      following optional forms:
  - 14      a.   Single life.
  - 15      b.   An actuarially equivalent joint and survivor option, with fifty percent or one  
16      hundred percent options.
  - 17      c.   Actuarially equivalent life with ten-year or twenty-year certain options.
  - 18      d.   An actuarially equivalent partial lump sum distribution option with a twelve-month  
19      maximum lump sum distribution.
  - 20      e.   An actuarially equivalent graduated benefit option with either a one percent or  
21      two percent increase to be applied the first day of January of each year.
- 22      Except for supreme and district court judges, unless a member specifically requests  
23      that the member receive benefits according to one of these options at the time of  
24      applying for retirement, all retirement benefits must be in the form of a single life  
25      benefit. For supreme and district court judges, unless a member specifically requests  
26      that the member receive benefits according to one of these options at the time of  
27      applying for retirement, all retirement benefits must be in the form of a lifetime monthly  
28      pension with fifty percent of the benefit continuing for the life of the surviving spouse, if  
29      any.
- 30      10.   The fund may accept rollovers from other eligible plans under rules adopted by the  
31      board for the purchase of additional service credit, but only to the extent the transfer is

- 1 a rollover contribution that meets the requirement of section 408 of the Internal  
2 Revenue Code.
- 3 11. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue  
4 Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code  
5 section 403(b) annuity or Internal Revenue Code section 457 deferred compensation  
6 plan for the purchase of permissive service credit, as defined in Internal Revenue  
7 Code section 415(n)(3)(A) or as repayment of a cashout from a governmental plan  
8 under Internal Revenue Code section 415(k)(3).
- 9 12. The board may establish individual retirement accounts and individual retirement  
10 annuities as permitted under section 408(q) of the Internal Revenue Code to allow  
11 employees to make voluntary employee contributions. The board may adopt rules to  
12 implement and administer the accounts and annuities under this section.

**REPORT OF STANDING COMMITTEE  
HB 1274**

**Government and Veterans Affairs Committee (Rep. Schauer, Chairman)** recommends **AMENDMENTS (25.0040.01001)** and when so amended, recommends **DO PASS** (7 YEAS, 4 NAYS, 2 ABSENT OR EXCUSED AND NOT VOTING). HB 1274 was placed on the Sixth order on the calendar.



**2025 SENATE STATE AND LOCAL GOVERNMENT**

**HB 1274**

# 2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

HB 1274  
3/20/2025

Relating to membership of the public employees retirement system public safety retirement plan.
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3:14 p.m. Chair Roers called the hearing to order.

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

Members Absent: Senator Braunberger

## **Discussion Topics:**

- ND Correctional Officers
- Parity across the board

3:14 p.m. Representative Porter, District #34, introduced the bill.

3:20 p.m. Colby Braun, Director ND Corrections & Rehabilitation, testified in favor and submitted testimony #43069.

3:24 p.m. Calvin Benson, Lobbyist ND Peace Officers Association, testified in favor.

3:25 p.m. Derrick Hohbein, Chief Operating/Financial Officer NDPERS, testified neutral and submitted testimony #41516.

## **Additional written testimony:**

Ryan Dralle, citizen, submitted testimony in favor #43139.

3:30 p.m. Vice Chairman Castaneda closed the hearing.

*Susan Helbling, Committee Clerk*

## **TESTIMONY OF DERRICK HOHBEIN**

### **House Bill 1274 – Public Safety Expansion to Include State Correctional Officers**

Good afternoon, Madam Chair 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 1274, which expands the eligibility in the Public Safety Plan to include correctional officers employed by a governmental unit. 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 1274 expands the eligibility in the State Public Safety Plan to include state correctional officers, 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 correctional officers 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 performed an analysis based on the July 1, 2023 valuation which estimates that the bill would move approximately 442 individuals from the Main Plan into the State Public Safety Plan resulting in an actuarial gain to the Main System of \$12.2 Million and an actuarial loss to the State Public Safety System of \$17.4 Million. In addition, the ongoing employer contribution rate across all employers of the State Public Safety Plan would need to be increased 0.12% to fund the increased eligibility.

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 1274 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 40 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. This concludes my testimony, and I'd be happy to answer any questions the committee may have.



June 12, 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. 25.0040.01000 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. 25.0040.01000 allows correctional officers 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 040 on NDPERS**

NDPERS provided data for correctional officers employed by the State of North Dakota, as defined in Bill 040. 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 442 members. It was determined that 2 of those records already participate in a Public Safety Plan. An additional 106 members were found to not be in the July 1, 2023 actuarial valuation data. The remaining 334 members transferring to the State Public Safety Employees group are currently in the Main System.

The following table provides information on the counts, average age and service, and average salary before and after the provisions of Bill 040:

	Current Members Public Safety with Prior Service (State Public Safety Employees Group)	Bill 040 Public Safety with Prior Service (State Public Safety Employees Group)
Count	181	515
Average Age	41.2	41.5
Average Benefit Service	10.0	9.5
Average Salary	\$68,073	\$57,273

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 peace officers 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 1,559, including 515 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 334 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 25.0040.01000	Difference
Main System Actuarial Accrued Liabilities	\$ 5,559,270,755	\$ 5,523,917,498	\$ (35,353,257)
Main System Actuarial Value of Assets	\$ 3,683,545,963	\$ 3,660,454,939	\$ (23,091,024)
Main System Normal Cost	\$ 152,758,636	\$ 150,814,304	\$ (1,944,332)
Main System Funded Ratio	66.26%	66.27%	0.01%
Public Safety With Prior Main System Service Actuarial Accrued Liabilities	\$ 187,025,504	\$ 227,528,752	\$ 40,503,248
Public Safety With Prior Main System Service Actuarial Value of Assets	\$ 128,273,097	\$ 151,364,121	\$ 23,091,024
Public Safety With Prior Main System Service Normal Cost	\$ 12,179,130	\$ 14,641,189	\$ 2,462,059
Public Safety With Prior Main System Service Funded Ratio	68.59%	66.53%	-2.06%

**Actuarial Impact of Bill 040 on State Public Safety Employees Actuarially Determined Employer Contribution (ADEC)**

A separate ADEC 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.

The impact on Normal Cost for the State Public Safety Employees Group is shown in Table I(b). As of July 1, 2023, the total Normal Cost of the State Public Safety Employees group initially decreases from 13.90% to 13.57% of projected compensation, due to the expansion of the group.

Bill 040 also increases the unfunded liability of the plan, which leads to an increase in the amortized unfunded liability portion of the ADEC as of July 1, 2023. However, the covered payroll of the group is also expected to increase. The amortized unfunded liability portion of the ADEC as a percentage of payroll increased from 4.34% to 4.68%, or 0.34%. Overall, the estimated impact of Bill 040 on the Public Safety With Prior Service Plan ADEC as of July 1, 2023 is an increase of 0.12% of pay, from 12.37% of pay to 12.49% of pay.



## **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 040 will enhance retirement benefits for correctional officers 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 correctional officers who transfer into the Public Safety System.

- Benefits Equity and Group Integrity

Under the Bill, correctional officers 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 correctional officers to be counted under the rules applicable to correctional officers. 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 correctional officers to describe the new retirement rules applicable to them, including the normal retirement age and early retirement age.



### **Summary**

- Correctional officers 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.
- Correctional officers 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 12, 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



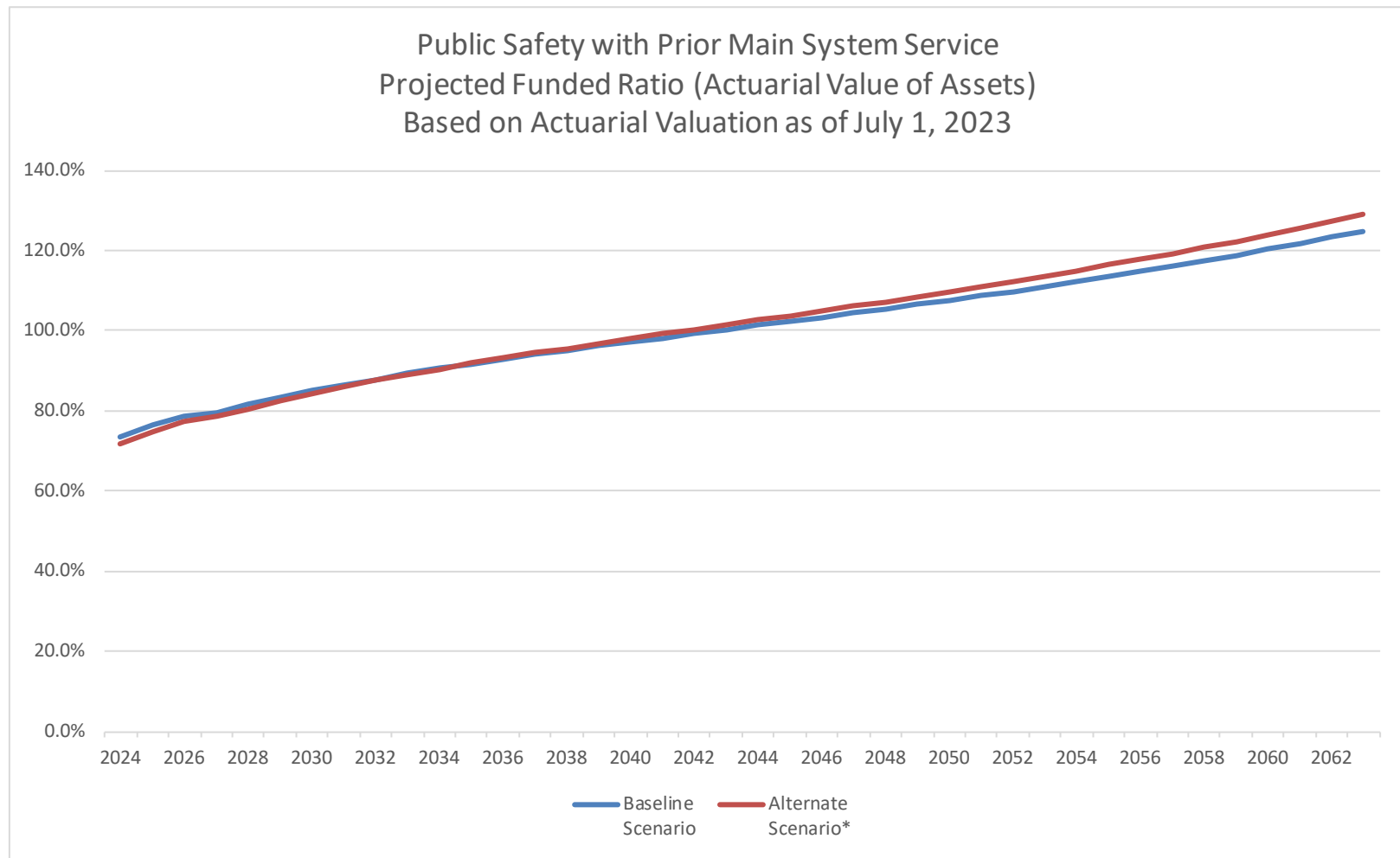
Bonita J. Wurst, ASA, EA, MAAA, FCA  
Senior Consultant



Abra D. Hill, ASA, MAAA, FCA  
Consultant

cc: Rebecca Fricke, NDPERS  
Joshua Murner, GRS





\* Alternate Scenario is based on additional data provided by NDPERS for Bill 25.0040.01000

**Projected Funded Ratios under Bill 040  
Based on July 1, 2023, Actuarial Valuation**

Year	Main System		Public Safety with Prior Main System Service	
	Baseline Scenario	Alternate Scenario*	Baseline Scenario	Alternate Scenario*
2024	68.2%	68.2%	73.7%	71.6%
2025	68.6%	68.6%	76.4%	74.6%
2026	68.0%	67.9%	78.8%	77.2%
2027	69.0%	69.0%	79.6%	78.4%
2028	69.9%	69.8%	81.5%	80.5%
2029	70.8%	70.7%	83.3%	82.5%
2030	71.6%	71.5%	84.9%	84.3%
2031	72.5%	72.4%	86.4%	86.0%
2032	73.2%	73.1%	87.9%	87.5%
2033	74.0%	73.9%	89.2%	89.0%
2034	74.6%	74.5%	90.5%	90.5%
2035	75.3%	75.3%	91.7%	91.8%
2036	75.9%	75.9%	92.9%	93.1%
2037	76.6%	76.5%	94.0%	94.4%
2038	77.1%	77.1%	95.1%	95.6%
2039	77.7%	77.7%	96.2%	96.8%
2040	78.3%	78.3%	97.2%	98.0%
2041	79.0%	78.9%	98.2%	99.2%
2042	79.6%	79.5%	99.2%	100.3%
2043	80.3%	80.3%	100.3%	101.4%
2044	81.1%	81.0%	101.3%	102.6%
2045	81.9%	81.8%	102.3%	103.7%
2046	82.8%	82.7%	103.3%	104.9%
2047	83.7%	83.7%	104.3%	106.0%
2048	84.8%	84.7%	105.4%	107.2%
2049	86.0%	85.9%	106.4%	108.4%
2050	87.3%	87.2%	107.5%	109.7%
2051	88.8%	88.8%	108.6%	110.9%
2052	90.5%	90.4%	109.8%	112.2%
2053	92.4%	92.4%	111.0%	113.6%
2054	94.6%	94.6%	112.2%	114.9%
2055	97.1%	97.1%	113.4%	116.3%
2056	100.0%	100.0%	114.7%	117.8%
2057	103.3%	103.4%	116.0%	119.3%
2058	103.7%	103.7%	117.4%	120.8%
2059	104.1%	104.2%	118.8%	122.3%
2060	104.6%	104.6%	120.2%	124.0%
2061	105.1%	105.2%	121.7%	125.6%
2062	105.7%	105.8%	123.3%	127.3%
2063	106.4%	106.4%	124.9%	129.1%

\* Alternate Scenario is based on additional data provided by NDPERS for Bill 25.0040.01000

**Projected Employer Normal Cost Rates under Bill 040  
(Includes Administrative Expense Component)  
Based on July 1, 2023, Actuarial Valuation**

Year	Main System		Public Safety with Prior Main System Service		Public Safety with Prior Main System Service State Employees Group Only	
	Baseline Scenario	Alternate Scenario*	Baseline Scenario	Alternate Scenario*	Baseline Scenario	Alternate Scenario*
2024	4.83%	4.85%	7.81%	7.71%	7.79%	7.49%
2025	4.48%	4.49%	7.78%	7.67%	7.70%	7.41%
2026	4.17%	4.18%	7.75%	7.64%	7.63%	7.35%
2027	3.89%	3.90%	7.72%	7.61%	7.57%	7.31%
2028	3.64%	3.65%	7.69%	7.58%	7.53%	7.27%
2029	3.40%	3.42%	7.66%	7.54%	7.49%	7.23%
2030	3.18%	3.19%	7.63%	7.51%	7.45%	7.20%
2031	2.97%	2.98%	7.60%	7.49%	7.42%	7.17%
2032	2.76%	2.77%	7.57%	7.46%	7.39%	7.14%
2033	2.56%	2.57%	7.55%	7.44%	7.36%	7.12%
2034	2.37%	2.38%	7.52%	7.41%	7.32%	7.10%
2035	2.19%	2.20%	7.49%	7.39%	7.28%	7.07%
2036	2.02%	2.03%	7.47%	7.36%	7.25%	7.05%
2037	1.86%	1.87%	7.44%	7.34%	7.22%	7.03%
2038	1.70%	1.71%	7.41%	7.32%	7.20%	7.02%
2039	1.55%	1.56%	7.39%	7.30%	7.18%	7.01%
2040	1.41%	1.42%	7.37%	7.27%	7.16%	7.00%
2041	1.28%	1.29%	7.34%	7.25%	7.13%	6.98%
2042	1.16%	1.16%	7.31%	7.23%	7.11%	6.96%
2043	1.04%	1.04%	7.29%	7.21%	7.08%	6.95%
2044	0.93%	0.93%	7.26%	7.18%	7.06%	6.93%
2045	0.83%	0.83%	7.24%	7.17%	7.03%	6.92%
2046	0.73%	0.73%	7.22%	7.15%	7.00%	6.90%
2047	0.64%	0.64%	7.21%	7.13%	6.98%	6.89%
2048	0.56%	0.56%	7.20%	7.12%	6.95%	6.88%
2049	0.48%	0.49%	7.19%	7.12%	6.93%	6.86%
2050	0.42%	0.42%	7.18%	7.11%	6.91%	6.85%
2051	0.36%	0.36%	7.18%	7.10%	6.89%	6.84%
2052	0.30%	0.30%	7.17%	7.10%	6.87%	6.83%
2053	0.25%	0.25%	7.17%	7.10%	6.86%	6.82%
2054	0.21%	0.21%	7.17%	7.10%	6.85%	6.82%
2055	0.17%	0.17%	7.17%	7.10%	6.84%	6.81%
2056	0.14%	0.14%	7.17%	7.10%	6.83%	6.81%
2057	0.11%	0.11%	7.17%	7.10%	6.83%	6.80%
2058	0.09%	0.09%	7.17%	7.09%	6.82%	6.80%
2059	0.07%	0.07%	7.17%	7.09%	6.82%	6.80%
2060	0.06%	0.06%	7.17%	7.09%	6.82%	6.80%
2061	0.04%	0.04%	7.17%	7.09%	6.82%	6.80%
2062	0.03%	0.03%	7.17%	7.09%	6.81%	6.79%
2063	0.03%	0.03%	7.16%	7.09%	6.81%	6.79%

\* Alternate Scenario is based on additional data provided by NDPERS for Bill 25.0040.01000

**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

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*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.<sup>1</sup> 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**

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<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>2</sup> 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,<sup>3</sup> 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

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<sup>3</sup> 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**

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



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

**SENATE STATE AND LOCAL GOVERNMENT COMMITTEE  
SENATOR KRISTIN ROERS, CHAIR  
MARCH 20, 2025**

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**NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1274**

Chair Roers and members of the Senate State and Local Government Committee, I am Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). Today, I submit this verbal and written testimony in support of House Bill 1274, which proposes to add state correctional officers to the public safety retirement plan.

All law enforcement and corrections team members in all state agencies and political subdivisions are in the public safety retirement plan, with one exception. Only state correctional officers with the ND DOCR are not currently in the public safety retirement plan. This bill is solely about parity and ensuring all public safety professionals who sacrifice so much and put their personal safety at risk every day for public safety in ND, receive the same benefits, including retirement. This bill is one of the most important pieces of legislation from the DOCR's perspective this session. In addition, Governor Armstrong included funding for this bill in his budget recommendation.

Corrections is very difficult and dangerous work. According to the 2011 Florida Mortality Study by the Florida State Fraternal Order of Police, on average, law enforcement and correctional officers die 12 years earlier than the general population. In other words, law enforcement and correctional officers live to around 62 years compared to 74 years for the general population. Other studies show a life expectancy

of 59 for law enforcement and correctional officers compared to 77 for general population. Given their shorter life expectancy, public safety professionals, which includes state correctional officers, do not have a lot of time to enjoy a much-earned retirement. In addition, state correctional officers also work in dangerous environments that put their health at risk, just like law enforcement officers and correctional officers in county and regional jails in ND. Studies show that correctional officers experience depression (25% vs. 7%), PTSD (27% vs. 4%), and suicide (7% vs. 5%) at much higher rates than the national population. DOCR correctional officers work hard and sacrifice to keep our communities safe every day by working in our state's prisons.

We anticipate between 450 and 500 total DOCR team members moving into the public safety retirement plan if this bill passes. Only positions which require a current correctional officer certification or equivalent, would be eligible for inclusion. Chair Roers and members of the Senate State and Local Government Committee, we ask that you support House Bill 1274 which adds state or DOCR correctional officers to the public safety retirement plan. I will stand for questions.

**In favor of HB 1274****Chairman and members of the committee**

**I am writing to you today to respectfully request a Do Pass recommendation for HB 1274 with additional amendments.**

My name is Ryan Dralle, I have worked for the Department of Corrections and Rehabilitation (DOCR) in Bismarck, North Dakota at the North Dakota State Penitentiary (NDSP) as an Industry specialist for Rough Rider Industries for over 5 years. Rough Rider Industries (RRI) is the prison industries division within the DOCR. RRI provides adult individuals job skills training that is necessary for reentry while providing quality goods and services in a self-sustaining manner. 97 % of individuals in prison will eventually re-enter society and we provide the real-world job skills, training and experience for our incarcerated individuals by also teaching them responsibility, accountability and teamwork. This greatly improves their odds of success once they are released from prison and all incarcerated individuals that work at RRI have lower incarceration rates once released. RRI offers many different opportunities for learning these skills through our vast industries of furniture production, signage, metal shop production and fabrication, upholstery, sewing, and current technologies of using AutoCAD, adobe illustrator and photoshop, inventor pro along with our production ordering software. The opportunities are limitless here. RRI has a fantastic purpose and I get to see the work in action everyday working with the residents and teaching them these skills regardless of their sentencing lengths. RRI gives longer sentenced individuals a chance to better themselves and give their current situations meaning and purpose along with shorter sentenced individuals skills to help re-entry more successful.

This job that comes with the benefits of improving resident lives also comes with the same dangers endured by correction officers.

Industry workers are constantly negotiating the narrow line of ensuring production and security goals are met while working side by side with our incarcerated workers each and every day for the full lengths of our shifts. We are constantly monitoring the temperaments each day of our workers that can change suddenly and drastically. We are also in separate buildings from the main parts of the prison, working with a limited security presence and often alone even though our shops are full of dangerous tools that the incarcerated workers need to do their jobs. The general negativity that surrounds the prison culture can be difficult for us to escape and does take a toll on our mental well-being over time. We have the difficult position of trying to balance worker discipline with responsibility and production, hoping the disciplinary actions taken does not jeopardize our security or production from a population that can have the mindset of “I have nothing to lose” in a retaliatory state.

In 2011, a South Dakota industry worker was attacked and murdered at the industries print shop at Pheasantland Industries at the South Dakota State Penitentiary. His name was Ronald Johnson, it was his 63<sup>rd</sup> birthday, he was working there for 23 years and nearing retirement. It was a true tragedy committed by two inmates that were already serving life sentences with “nothing to lose.” This happened in South Dakota’s prison industries at their maximum-security prison just like RRI at NDSP.

On October 12, 2017, in a North Carolina correctional facility, an inmate started a fire in the sewing industry facility while orchestrating an escape attempt. The incident resulted in four correctional facility staff casualties; two were correctional officers, one was the maintenance mechanic and the other was the sewing industry plant manager.

In 2018, at the Minnesota maximum security prison at Stillwater, 45-year-old correctional industry worker Joseph Gomm was murdered by an inmate in the prison industry metal shop. The inmate checked out a hammer to use for the day, then used it along with two homemade weapons to murder Gomm. This was the first death of a staff member in Minnesota prisons history, this is also like the current circumstances that we have at RRI. I have a wonderful young family, and these instances are always in the back of my mind when I clock in every morning

In 2020, right before an NDSP inmate was set to be released, during a heated verbal exchange, he turned to my coworker, Pat Kuntz, and told him "When I get out of here, you are first on my list." The dangers are real and constantly present.

RRI industry workers are ensuring all security measures are met while also balancing production goals. Throughout our department we are conducting security checks, tool and chemical audits, we are activating Incident Command System calls, we are monitoring the mental health of our workers, we are doing pat down searches of residents in Jamestown, we are giving rides after work to our minimum custody residents from the showroom back to MRCC. We are working our entire shifts one on one with the resident workers guiding them to give them the skills necessary to succeed upon release. We are going above and beyond to improve the societal reintegration for our resident workers, and we are very proud in doing this.

RRI industry workers have not received equity increases or retention bonuses that have been distributed DOCR wide because of our uniqueness of self-funding within the DOCR even though our current staff retention has been as low as that of the DOCR. I fear that if RRI industry workers are not included in the text of this bill that we will be deserted on this as well. I ask that our retirement gets the same treatment as the correctional officers that we work alongside with. I fully enjoy the work that we do here at RRI and see the purpose that it brings to the incarcerated individuals that we work side by side with. Industry workers endure the same daily challenges as correctional officers in a less secure environment.

Rough Rider Industries has 30 total employees, half of which spend our entire shift with the resident workers, and all of us have direct contact with incarcerated individuals in one fashion or another, ranging from the minimum to the maximum-security prisons, the difficulties and dangers are clear.

Please give HB 1274 a **Do Pass** with us Rough Rider Industry workers as a clear addition.

Thank you for your consideration.

Ryan Dralle

# 2025 SENATE STANDING COMMITTEE MINUTES

## State and Local Government Committee Room JW216, State Capitol

HB 1274  
3/21/2025

Relating to membership of the public employees retirement system public safety retirement plan.
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10:51 a.m. Chair Roers called the hearing to order.

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

Members Absent: Senator Braunberger

### Discussion Topics:

- Amendment language
- Committee Action

10:54 a.m. Rebecca Fricke, Executive Director NDPERS, assisted with amendment language.

10:58 a.m. Senator Barta moved Amendment LC #25.0040.02001.

10:58 a.m. Senator Walen seconded the motion.

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

Motion Passed 5-0-1

11:00 a.m. Senator Walen moved Do Pass as amended.

11:00 a.m. Senator Barta seconded the motion.

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

Motion Passed 5-0-1



Senate State and Local Government Committee  
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Page 2

Senator Walen will carry the bill

11:03 a.m. Chair Roers closed the hearing.

*Susan Helbling, Committee Clerk*

CB  
3/21/25  
1 of 17

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO  
FIRST ENGROSSMENT**

**ENGROSSED HOUSE BILL NO. 1274**

Introduced by

Representatives Porter, Dockter, Heinert, Satrom, Schauer, Karls

Senators Cleary, Roers, Axtman, Dever

1 A BILL for an Act to amend and reenact sections 54-52-01, 54-52-02.15, 54-52-06.4, and  
2 54-52-17 of the North Dakota Century Code, relating to membership of the public employees  
3 retirement system public safety retirement plan.

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

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

7 **54-52-01. Definition of terms.**

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

- 9 1. "Account balance" means the total contributions made by the employee, vested  
10 employer contributions under section 54-52-11.1, the vested portion of the vesting  
11 fund as of June 30, 1977, and interest credited thereon at the rate established by the  
12 board.
- 13 2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any  
14 person designated by a participating member to receive benefits.
- 15 3. "Correctional officer" means a participating member who is employed as a correctional  
16 officer by a ~~political subdivision~~ governmental unit and, notwithstanding subsection 14,  
17 for an individual employed on or after the effective date of this Act, is employed at  
18 least thirty-two hours per week and at least twenty weeks each year of employment. A  
19 correctional officer who is a participating member of the public safety retirement plan  
20 created by this chapter who begins employment on or after the effective date of this

- 1        Act is ineligible to participate concurrently in any other retirement plan administered by  
2        the public employees retirement system. The term includes an individual employed by  
3        a correctional facility as defined in section 12-44.1-01, who is enrolled in, but has not  
4        yet completed, a correctional officer course approved or certified by the North Dakota  
5        department of corrections and rehabilitation.
- 6        4. "Deferred member" means a participating member who is not actively participating in  
7        the main plan under this chapter and who has an account intact in the main plan under  
8        this chapter.
- 9        5. "Eligible employee", except as otherwise provided under section 54-52-02.15, means  
10       a permanent employee who meets all of the eligibility requirements set by this chapter  
11       and who is eighteen years or more of age. The term includes appointive and elective  
12       officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching  
13       employees of the superintendent of public instruction, including the superintendent of  
14       public instruction, who elect to transfer from the teachers' fund for retirement to the  
15       public employees retirement system under section 54-52-02.13, and employees of the  
16       state board for career and technical education who elect to transfer from the teachers'  
17       fund for retirement to the public employees retirement system under section  
18       54-52-02.14. The term does not include nonclassified state employees who elected  
19       under section 54-52.6-02 to become members of the retirement plan established  
20       under chapter 54-52.6. The term does include employees of the judicial branch and  
21       employees of the board of higher education and state institutions under the jurisdiction  
22       of the board of higher education.
- 23       6. "Employee" means any individual employed by a governmental unit, whose  
24       compensation is paid out of the governmental unit's funds, or funds controlled or  
25       administered by a governmental unit, or paid by the federal government through any of  
26       its executive or administrative officials; licensed employees of a school district means  
27       those employees eligible to participate in the teachers' fund for retirement who, except  
28       under subsection 2 of section 54-52-17.2, are not eligible employees under this  
29       chapter.
- 30       7. "Employer" means a governmental unit.

Sixty-ninth  
Legislative Assembly

- 1        8. "Firefighter" means a participating member who is employed as a firefighter by a  
2        political subdivision and, notwithstanding subsection 13, for an individual employed  
3        after July 31, 2017, is employed at least thirty-two hours per week and at least twenty  
4        weeks each year of employment. A firefighter who is a participating member of the ~~law~~  
5        ~~enforcement~~public safety retirement plan created by this chapter who begins  
6        employment after July 31, 2017, is ineligible to participate concurrently in any other  
7        retirement plan administered by the public employees retirement system. The term  
8        does not include a firefighter employee of the North Dakota national guard.
- 9        9. "Funding agent" or "agents" means an investment firm, trust bank, or other financial  
10       institution which the retirement board may select to hold and invest the employers' and  
11       members' contributions.
- 12       10. "Governmental unit" means the state of North Dakota, except the highway patrol for  
13       members of the retirement plan created under chapter 39-03.1, or a participating  
14       political subdivision of the state.
- 15       11. "National guard security officer or firefighter" means a participating member who is:  
16       a.    A security police employee of the North Dakota national guard; or  
17       b.    A firefighter employee of the North Dakota national guard.
- 18       12. "Participating member" means an eligible employee who through payment into the  
19       plan has established a claim against the plan.
- 20       13. "Peace officer" means a participating member who is a peace officer as defined in  
21       section 12-63-01 and is employed as a peace officer by the state, except by the  
22       highway patrol for members of the retirement plan created under chapter 39-03.1, or is  
23       employed by a political subdivision and, notwithstanding subsection 14, for persons  
24       employed after August 1, 2005, is employed thirty-two hours or more per week and at  
25       least twenty weeks each year of employment. A peace officer who is a participating  
26       member of the ~~law enforcement~~public safety retirement plan created by this chapter  
27       who begins employment after August 1, 2005, is ineligible to participate concurrently in  
28       any other retirement plan administered by the public employees retirement system.
- 29       14. "Permanent employee" means an employee whose services are not limited in duration  
30       and who is filling an approved and regularly funded position in an eligible



1 governmental unit, and is employed twenty hours or more per week and at least  
2 twenty weeks each year of employment.

3 15. "Prior service" means service or employment before July 1, 1966.

4 16. "Prior service credit" means such credit toward a retirement benefit as the retirement  
5 board may determine under the provisions of this chapter.

6 17. "Public employees retirement system" means the retirement plan and program  
7 established by this chapter.

8 18. "Retirement" means the acceptance of a retirement allowance under this chapter upon  
9 either termination of employment or termination of participation in the retirement plan.

10 19. "Retirement board" or "board" means the governing authority created under section  
11 54-52-03.

12 20. "Seasonal employee" means a participating member who does not work twelve  
13 months a year.

14 21. "Service" means employment on or after July 1, 1966.

15 22. "Service benefit" means the credit toward retirement benefits as determined by the  
16 retirement board under the provisions of this chapter.

17 23. "Temporary employee" means an employee who is not eligible to participate as a  
18 permanent employee, who is at least eighteen years old and not actively contributing  
19 to another employer-sponsored pension fund, and, if employed by a school district,  
20 occupies a noncertified teacher's position.

21 24. "Wages" and "salaries" means the member's earnings in eligible employment under  
22 this chapter reported as salary on the member's federal income tax withholding  
23 statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125,  
24 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as  
25 payments for unused sick leave, personal leave, vacation leave paid in a lump sum,  
26 overtime, housing allowances, transportation expenses, early retirement incentive pay,  
27 severance pay, medical insurance, workforce safety and insurance benefits, disability  
28 insurance premiums or benefits, or salary received by a member in lieu of previously  
29 employer-provided fringe benefits under an agreement between the member and  
30 participating employer. Bonuses may be considered as salary under this section if  
31 reported and annualized pursuant to rules adopted by the board.

1       **SECTION 2. AMENDMENT.** Section 54-52-02.15 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **54-52-02.15. Public employees retirement system main plan - Closure to new hires -**  
4 **Multiple plan membership.**

- 5       1. Under this section "eligible employee" means a permanent employee who:
- 6           a. Meets all the eligibility requirements set by this chapter;
- 7           b. Is at least eighteen years of age;
- 8           c. Becomes a participating member after December 31, 2024; and
- 9           d. Is not eligible to participate in the ~~law enforcement~~public safety plan, judges' plan,
- 10           highway patrol plan, teachers' fund for retirement plan, or alternative retirement
- 11           program established under section 15-10-17 for university system employees.
- 12       2. Effective January 1, 2025, the public employees retirement system defined benefit
- 13       main plan maintained for employees is closed to new eligible employees. However, an
- 14       employee who becomes a participating or deferred member under this chapter before
- 15       January 1, 2025, remains in the defined benefit retirement plan under this chapter,
- 16       regardless of being rehired after December 31, 2024.
- 17       3. Except as otherwise provided under this section, effective January 1, 2025, an eligible
- 18       employee who begins employment with an employer shall participate in the defined
- 19       contribution retirement plan under chapter 54-52.6 as provided under section
- 20       54-52.6-02.1.
- 21       4. This section does not impact an employee to the extent the employee is a participating
- 22       member in one or more of the following enumerated retirement plans: ~~law~~
- 23       ~~enforcement~~public safety plan, judges' plan, highway patrol plan, teachers' fund for
- 24       retirement plan, or alternative retirement program established under section 15-10-17
- 25       for university system employees.
- 26           a. A participating or deferred member in the defined contribution retirement plan
- 27           under chapter 54-52.6 who becomes eligible to participate in a plan enumerated
- 28           under this subsection is eligible to participate in the retirement plan enumerated
- 29           under this subsection.
- 30           b. A participating member of a retirement plan enumerated under this subsection
- 31           who becomes an eligible employee is not eligible to participate in the defined

1 benefit retirement plan under this chapter but instead participates in the defined  
2 contribution retirement plan under chapter 54-52.6. However, this subdivision  
3 does not apply to an individual who before January 1, 2025, is a participating or a  
4 deferred member under this chapter, as that individual continues to participate in  
5 the defined benefit retirement plan under this chapter.

6 5. The board shall adopt rules to implement this section.

7 **SECTION 3. AMENDMENT.** Section 54-52-06.4 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **54-52-06.4. Contribution by peace officers and correctional officers employed by the**  
10 **state or security officers employed by the national guard - Employer contribution.**  
11 **(Retroactive application - See note)**

- 12 1. a. Each peace officer employed by the bureau of criminal investigation who is a  
13 member of the public employees retirement system is assessed and shall pay  
14 monthly four percent of the employee's monthly salary. Peace officer  
15 contributions increase by one percent of the member's monthly salary beginning  
16 with the monthly reporting period of January 2012; with an additional increase of  
17 one percent, beginning with the reporting period of January 2013; with an  
18 additional increase of one percent, beginning with the reporting period of  
19 January 2024; and with an additional increase of one percent, beginning with the  
20 reporting period of January 2025.
- 21 b. Each correctional officer and peace officer employed by the state, other than a  
22 peace officer employed by the bureau of criminal investigation, who is a member  
23 of the public employees retirement system is assessed and shall pay six percent  
24 of the employee's monthly salary.
- 25 c. Effective August 1, 2015, each national guard security officer who is a member of  
26 the public employee's retirement system is assessed and monthly shall pay  
27 six percent of the employee's monthly salary. National guard security officer  
28 contributions decrease by one-half of one percent of the member's monthly  
29 salary beginning with the monthly reporting period of January 2016.
- 30 d. The assessment under this subsection must be deducted and retained out of the  
31 employee's salary in equal monthly installments.



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1        2. The employer of a correctional officer or peace officer employed by the state or a  
2        national guard security officer shall contribute an amount determined by the board to  
3        be actuarially required to support the level of benefits specified in section 54-52-17.  
4        The employer's contribution must be paid from funds appropriated for salary or from  
5        any other funds available for such purposes. If the correctional officer's, peace  
6        officer's, or security officer's assessment is paid by the employer under subsection 3 of  
7        section 54-52-05, the employer shall contribute, in addition, an amount equal to the  
8        required correctional officer's, peace officer's, or security officer's assessment.

9        **SECTION 4. AMENDMENT.** Section 54-52-17 of the North Dakota Century Code is  
10       amended and reenacted as follows:

11       **54-52-17. Formulation of plan. (Retroactive application - [See note](#))**

12       Participating members shall receive benefits according to this section and according to  
13       rules adopted by the board, not inconsistent with this chapter. ~~No person~~An individual is not  
14       entitled to receive a prior service benefit if the ~~person~~individual was not continuously employed  
15       by a governmental unit in North Dakota for a period of not less than two years immediately ~~prior~~  
16       ~~to preceding~~before eligibility for retirement.

17       1. Participating members shall receive credit for full-time employment or its equivalent  
18       from the date they attain eligibility until their normal retirement date, postponed  
19       retirement date, or early retirement date, as defined in this section. Part-time  
20       employment will be recognized as full-time employment on a prorated basis as the  
21       board may prescribe.

22       2. Retirement benefits are calculated from the participating member's final average  
23       salary, which is the average of the highest salary received by the member for any  
24       thirty-six months employed during the last one hundred twenty months of employment.  
25       For members who terminate employment on or after August 1, 2010, final average  
26       salary is the average of the highest salary received by the member for any thirty-six  
27       months employed during the last one hundred eighty months of employment. For  
28       members who terminate employment between July 31, 2005, and August 1, 2010, final  
29       average salary is the average of the highest salary received by the member for any  
30       thirty-six months employed during the period for which the board has appropriate and  
31       accurate salary records on the board's electronic database, but that period may not be



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1 more than the last one hundred eighty months of employment. For members who  
2 terminate employment after December 31, 2019, final average salary is the higher of  
3 the final average salary calculated on December 31, 2019, or the average salary  
4 earned in the three highest periods of twelve consecutive months employed during the  
5 last one hundred eighty months of employment. Months without earnings are excluded  
6 for the purpose of computing an average. If the participating member has worked for  
7 less than thirty-six months at the normal retirement date, the final average salary is the  
8 average salary for the total months of employment.

9 3. Retirement dates are defined as follows:

10 a. Normal retirement date, except for a national guard security officer or firefighter, a  
11 ~~firefighter employed by a political subdivision, a correctional officer or peace~~  
12 ~~officer employed by the state, or a firefighter, peace officer, or correctional officer~~  
13 ~~employed by a political subdivision,~~ is:

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

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

19 b. Normal retirement date for members first enrolled after December 31, 2015,  
20 except for a national guard security officer or firefighter, a ~~firefighter employed by~~  
21 ~~a political subdivision, a correctional officer or peace officer~~ employed by the  
22 state, a firefighter, peace officer, or correctional officer employed by a political  
23 subdivision, or a supreme court or district court judge, is:

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

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

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

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- 1                   (1) The first day of the month next following the month in which the national  
2                   guard security officer or firefighter attains the age of fifty-five years and has  
3                   completed at least three eligible years of employment; or  
4                   (2) When the national guard security officer or firefighter has a combined total  
5                   of years of service credit and years of age equal to eighty-five and has not  
6                   received a retirement benefit under this chapter.
- 7           d. Normal retirement date for a peace officer, firefighter, or correctional officer  
8           employed by a political subdivision is:  
9                   (1) The first day of the month next following the month in which the peace  
10                  officer, firefighter, or correctional officer attains the age of fifty-five years and  
11                  has completed at least three eligible years of employment; or  
12                  (2) When the peace officer, firefighter, or correctional officer has a combined  
13                  total of years of service credit and years of age equal to eighty-five and has  
14                  not received a retirement benefit under this chapter.
- 15           e. (1) Normal retirement date for a peace officer employed by the bureau of  
16           criminal investigation is:  
17                   (a) [1] For a member employed before August 1, 2023, the first day of  
18                   the month next following the month in which the peace officer  
19                   attains the age of fifty-five years and has completed at least  
20                   three eligible years of employment; and  
21                               [2] For a member employed after July 31, 2023, the first day of the  
22                   month next following the month in which the peace officer attains  
23                   the age of fifty-five years and has completed at least ten eligible  
24                   years of employment; or  
25                   (b) When the peace officer has a combined total of years of service credit  
26                   and years of age equal to eighty-five and has not received a  
27                   retirement benefit under this chapter.
- 28                   (2) Normal retirement date for a correctional officer or peace officer employed  
29                   by the state, other than a peace officer employed by the bureau of criminal  
30                   investigation, is:

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

- 1           h. Disability retirement date is the first day of the month after a member becomes  
2           permanently and totally disabled, according to medical evidence called for under  
3           the rules of the board, and has completed at least one hundred eighty days of  
4           eligible employment. For supreme and district court judges, permanent and total  
5           disability is based solely on a judge's inability to perform judicial duties arising out  
6           of physical or mental impairment, as determined pursuant to rules adopted by the  
7           board or as provided by subdivision a of subsection 3 of section 27-23-03.
- 8           (1) A member is eligible to receive disability retirement benefits only if the  
9           member became disabled during the period of eligible employment and  
10          applies for disability retirement benefits within twelve months of the date the  
11          member terminates employment.
- 12          (2) A member is eligible to continue to receive disability benefits as long as the  
13          permanent and total disability continues and the member submits the  
14          necessary documentation and undergoes medical testing required by the  
15          board, or for as long as the member participates in a rehabilitation program  
16          required by the board, or both. If the board determines a member no longer  
17          meets the eligibility definition, the board may discontinue the disability  
18          retirement benefit. The board may pay the cost of any medical testing or  
19          rehabilitation services the board deems necessary and these payments are  
20          appropriated from the retirement fund for those purposes. A member's  
21          receipt of disability benefits under this section is limited to receipt from the  
22          fund to which the member was actively contributing at the time the member  
23          became disabled.
- 24          4. The board shall calculate retirement benefits as follows:
- 25           a. Normal retirement benefits for all retirees, except supreme and district court  
26           judges, and peace officers employed by the bureau of criminal investigation, ~~and~~  
27           ~~other peace officers employed by the state~~, reaching normal retirement date  
28           equal an annual amount, payable monthly, comprised of a service benefit and a  
29           prior service benefit, as defined in this chapter, which is determined as follows:
- 30           (1) For members first enrolled:



- 1 (a) Before January 1, 2020, service benefit equals two percent of final  
2 average salary multiplied by the number of years of service  
3 employment.
- 4 (b) After December 31, 2019, service benefit equals one and seventy-five  
5 hundredths percent of final average salary multiplied by the number of  
6 years of service employment.
- 7 (2) Prior service benefit equals two percent of final average salary multiplied by  
8 the number of years of prior service employment.
- 9 b. Normal retirement benefits for all supreme and district court judges under the  
10 public employees retirement system reaching normal retirement date equal an  
11 annual amount, payable monthly, comprised of a benefit as defined in this  
12 chapter, determined as follows:
- 13 (1) Benefits must be calculated from the time of appointment or election to the  
14 bench and must equal three and one-half percent of final average salary  
15 multiplied by the first ten years of judicial service, two and eighty hundredths  
16 percent of final average salary multiplied by the second ten years of judicial  
17 service, and one and one-fourth percent of final average salary multiplied by  
18 the number of years of judicial service exceeding twenty years.
- 19 (2) Service benefits must include, in addition, an amount equal to the percent  
20 specified in subdivision a of final average salary multiplied by the number of  
21 years of nonjudicial employee service and employment.
- 22 c. Normal retirement benefits for a peace officer employed by the bureau of criminal  
23 investigation reaching the normal retirement date equals an annual amount,  
24 payable monthly, comprised of a service benefit and a prior service benefit  
25 determined as follows:
- 26 (1) The first twenty years of credited service multiplied by three percent of final  
27 average salary.
- 28 (2) For years in excess of twenty years of credited service multiplied by one  
29 and seventy-five hundredths percent of final average salary.
- 30 d. ~~Normal retirement benefits for a peace officer employed by the state, other than~~  
31 ~~by the bureau of criminal investigation, reaching the normal retirement date~~

1 equals an annual amount, payable monthly, comprised of a service benefit and a  
2 prior service benefit determined as follows:

3 (1) For members first enrolled:

4 (a) Before January 1, 2020, service benefit equals two percent of final  
5 average salary multiplied by the number of years of service  
6 employment.

7 (b) After December 31, 2019, service benefit equals one and seventy-five  
8 hundredths percent of final average salary multiplied by the number of  
9 years of service employment.

10 (2) Prior service benefit equals two percent of final average salary multiplied by  
11 the number of years of prior service employment.

12 e. Postponed retirement benefits are calculated as for single life benefits for those  
13 members who retired on or after July 1, 1977.

14 f.e. Early retirement benefits are calculated as for single life benefits accrued to the  
15 date of termination of employment, but must be actuarially reduced to account for  
16 benefit payments beginning before the normal retirement date, as determined  
17 under subsection 3. Except for a national guard security officer or firefighter, a  
18 firefighter, ~~peace officer, or correctional officer~~ employed by a political  
19 subdivision, a peace officer or correctional officer employed by the state  
20 governmental unit, or a supreme court or district court judge, early retirement  
21 benefits for members first enrolled after December 31, 2015, are calculated for  
22 single life benefits accrued to the date of termination of employment, but must be  
23 reduced by fixed rate of eight percent per year to account for benefit payments  
24 beginning before the normal retirement date. A retiree, other than a supreme or  
25 district court judge, is eligible for early retirement benefits only after having  
26 completed three years of eligible employment. A supreme or district court judge  
27 retiree is eligible for early retirement benefits only after having completed five  
28 years of eligible employment.

29 g.f. Except for supreme and district court judges, disability retirement benefits are  
30 twenty-five percent of the member's final average salary. Disability retirement  
31 benefits for supreme and district court judges are seventy percent of final

1 average salary reduced by the member's primary social security benefits and by  
2 any workforce safety and insurance benefits paid. The minimum monthly  
3 disability retirement benefit under this section is one hundred dollars.

4 5. Upon termination of employment after completing three years of eligible employment,  
5 except for supreme and district court judges, who must complete five years of eligible  
6 employment, but before normal retirement date, a member who does not elect to  
7 receive early retirement benefits is eligible to receive deferred vested retirement  
8 benefits payable commencing on the member's normal retirement date in one of the  
9 optional forms provided in subsection 9. Members who have delayed or inadvertently  
10 failed to apply for retirement benefits to commence on their normal retirement date  
11 may choose to receive either a lump sum payment equal to the amount of missed  
12 payments, or an actuarial increase to the form of benefit the member has selected,  
13 which increase must reflect the missed payments.

14 6. If before retiring a member dies after completing three years of eligible employment,  
15 except for supreme and district court judges, who must have completed five years of  
16 eligible employment, the board shall pay the member's account balance to the  
17 member's designated beneficiary as provided in this subsection. If the member has  
18 designated an alternate beneficiary with the surviving spouse's written consent, the  
19 board shall pay the member's account balance to the named beneficiary. If the  
20 member has named more than one primary beneficiary, the board shall pay the  
21 member's account balance to the named primary beneficiaries in the percentages  
22 designated by the member or, if the member has not designated a percentage for the  
23 beneficiaries, in equal percentages. If one or more of the primary beneficiaries has  
24 predeceased the member, the board shall pay the predeceased beneficiary's share to  
25 the remaining primary beneficiaries. If any beneficiary survives the member, yet dies  
26 before distribution of the beneficiary's share, the beneficiary must be treated as if the  
27 beneficiary predeceased the member. If there are no remaining primary beneficiaries,  
28 the board shall pay the member's account balance to the contingent beneficiaries in  
29 the same manner. If there are no remaining designated beneficiaries, the board shall  
30 pay the member's account balance to the member's estate. If the member has not



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- 1 designated an alternate beneficiary or the surviving spouse is the beneficiary, the  
2 surviving spouse of the member may select a form of payment as follows:
- 3 a. If the member was a supreme or district court judge, the surviving spouse may  
4 select one of the following optional forms of payment:
- 5 (1) A lump sum payment of the member's retirement account as of the date of  
6 death.
- 7 (2) Payments as calculated for the deceased member as if the member was of  
8 normal retirement age at the date of death, payable until the spouse dies.
- 9 b. The surviving spouse of all other members may select one of the following  
10 options:
- 11 (1) A lump sum payment of the member's retirement account as of the date of  
12 death.
- 13 (2) Payment of a monthly retirement benefit equal to fifty percent of the  
14 deceased member's accrued single life retirement benefits until the spouse  
15 dies.
- 16 (3) If the member dies on or after the member's normal retirement date, the  
17 payment of a monthly retirement benefit equal to an amount that would have  
18 been paid to the surviving spouse if the member had retired on the day of  
19 the member's death and had selected a one hundred percent joint and  
20 survivor annuity, payable until the spouse dies. A surviving spouse who  
21 received a benefit under this subsection as of July 31, 1995, is entitled to  
22 the higher of that person's existing benefit or the equivalent of the accrued  
23 benefit available under the one hundred percent joint and survivor provision  
24 as if the deceased member were of normal retirement age, with the increase  
25 payable beginning August 1, 1995.
- 26 7. If a member not coming under the provisions of subsection 6 terminates employment  
27 because of death, permanent and total disability, or any voluntary or involuntary  
28 reason prior to retirement, the member or the member's designated beneficiary is  
29 entitled to the member's account balance at termination. The board automatically shall  
30 refund a member's account balance if the member has completed less than three  
31 years of eligible employment, has an account balance of less than one thousand



1 dollars, and was not a supreme or district court judge. If the member was a supreme  
2 or district court judge, the board automatically shall refund a member's account  
3 balance if the member completed less than five years of eligible employment. A  
4 member may waive the refund if the member submits a written statement to the board,  
5 within thirty days after termination, requesting that the member's account balance  
6 remain in the fund.

7 8. The surviving spouse of a member receiving retirement benefits must be the  
8 member's primary beneficiary unless there is no surviving spouse or the surviving  
9 spouse designates an alternate beneficiary in writing. If a member receiving retirement  
10 benefits or the member's surviving spouse receiving retirement benefits dies before  
11 the total amount of benefits paid to either or both equals the amount of the member's  
12 account balance at retirement, the difference must be paid to the named beneficiary of  
13 the recipient or, if there is no named beneficiary, to the recipient's estate. A benefit  
14 payment owed to the member, surviving spouse, or alternate beneficiary which was  
15 not paid before the death of the member, surviving spouse, or alternate beneficiary  
16 must be paid to the named beneficiary of the recipient or, if there is no named  
17 beneficiary, to the recipient's estate.

18 9. The board shall adopt rules providing for the receipt of retirement benefits in the  
19 following optional forms:

20 a. Single life.

21 b. An actuarially equivalent joint and survivor option, with fifty percent or one  
22 hundred percent options.

23 c. Actuarially equivalent life with ten-year or twenty-year certain options.

24 d. An actuarially equivalent partial lump sum distribution option with a twelve-month  
25 maximum lump sum distribution.

26 e. An actuarially equivalent graduated benefit option with either a one percent or  
27 two percent increase to be applied the first day of January of each year.

28 Except for supreme and district court judges, unless a member specifically requests  
29 that the member receive benefits according to one of these options at the time of  
30 applying for retirement, all retirement benefits must be in the form of a single life  
31 benefit. For supreme and district court judges, unless a member specifically requests

- 1           that the member receive benefits according to one of these options at the time of  
2           applying for retirement, all retirement benefits must be in the form of a lifetime monthly  
3           pension with fifty percent of the benefit continuing for the life of the surviving spouse, if  
4           any.
- 5       10.   The fund may accept rollovers from other eligible plans under rules adopted by the  
6           board for the purchase of additional service credit, but only to the extent the transfer is  
7           a rollover contribution that meets the requirement of section 408 of the Internal  
8           Revenue Code.
- 9       11.   The board may accept trustee-to-trustee transfers as permitted by Internal Revenue  
10           Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code  
11           section 403(b) annuity or Internal Revenue Code section 457 deferred compensation  
12           plan for the purchase of permissive service credit, as defined in Internal Revenue  
13           Code section 415(n)(3)(A) or as repayment of a cashout from a governmental plan  
14           under Internal Revenue Code section 415(k)(3).
- 15       12.   The board may establish individual retirement accounts and individual retirement  
16           annuities as permitted under section 408(q) of the Internal Revenue Code to allow  
17           employees to make voluntary employee contributions. The board may adopt rules to  
18           implement and administer the accounts and annuities under this section.

**REPORT OF STANDING COMMITTEE  
ENGROSSED HB 1274**

**State and Local Government Committee (Sen. Roers, Chairman)** recommends **AMENDMENTS** ([25.0040.02001](#)) and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HB 1274 was placed on the Sixth order on the calendar. This bill does not affect workforce development.