2023 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1040

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

HB 1040
1/13/2023

Relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan, relating to a transfer from the legacy earnings fund to the public employees retirement system main plan and the public employees retirement system defined benefit and defined contribution retirement plans, and relating to public employees retirement system retirement plan contribution rates upon reaching full funding.

Meeting called to order by Chairmen Schauer at 8:52 AM.

Chairmen Austen Schauer, Vice Chairmen Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, Mary Schneider. All present.

Discussion Topics:
- New proposed DC retirement Plan
- Existing DC retirement plan
- Defined contribution plan for new hires
- Input from all stakeholders
- Current and future workforce
- Funding to raise contribution rates
- Valuing employees
- Comparing retirement plans with other states
- Impact on younger employees
- Cost of new retirement plan
- Use of taxpayer money
- Attractiveness of a new DC plan
- Life expectancy
- Focus of compensation on benefits
- Alternative options for retirement plans
- History of past DC retirement plans
- Appeal of retirement plans among younger generations
- Best practices for DC retirement plans

Jennifer Clark, with the North Dakota Legislative Council, neutral testimony (#13201).

Rep. Lefor introduced HB 1040 with supportive testimony and proposed an amendment to bill and rereferral to the Appropriations Committee (#18201).

Scott Miller, Executive Director for the North Dakota Public Employees Retirement System, opposing testimony (#18205) (#18206) (#18207).

Rep. Kasper spoke in opposition.

Chairman Schauer called for a recess at 10:02AM.

Chairman Schauer readjourned the meeting at 10:11AM

Sen. Weber spoke in opposition.

Pam Sharp, Representative of the Coalition for Retirement Stability, opposing testimony (#18199) (#18202).

Nick Archuleta, president of North Dakota United, opposing testimony (#13216).

Sharon Schiermeister, retired state employee, opposing testimony (#18197).

Janelle Moes, with American Association of Retired Persons, spoke in opposition.

Darren Schimke, President of the Professional Fire Fighters of North Dakota, opposing testimony (#13171).

Gary Fiest, auditor in the Office of State Tax Commissioners Officer, opposing testimony (#13141).

Landis Larson, President of the North Dakota ALF-CIO, opposing testimony (#13127).

Maureen Storstad, Finance and Administrative Services Director, City of Grand Forks, ND, opposing testimony (#13069).

Jamison Fuqua, Lead Fleet Maintenance Mechanic for the city of Grand Forks, opposing testimony (#13072).

Gordy Smith, former auditor for the North Dakota State Auditor's Office, opposing testimony (#18204).

Janilyn Murtha, Executive Director of the North Dakota Retirement and Investment Office on behalf of the Teacher's Fund for Retirement Board of Trustees, neutral testimony (#13185).

David Krebsbach, Vice Chancellor of Administrative Affairs and Chief Financial Officer for the North Dakota University System, neutral testimony (#13093).

Ryan Frost, Senior Policy Analyst for the Reason Foundation, neutral testimony (#13136).

Zeny Augullana, Senior Director of Government Relations for the Teachers Insurance and Annuity Association of America (TIAA), neutral testimony (#13144).

Additional written testimony:

Erik Holland, retired North Dakota state employee, opposition testimony (#12672).

Brett Lambercht, Mayor of the city of Wahpeton, ND, opposition testimony (#12962).

Dana Henry, Compliance Officer with the Office of State Tax Commissioner, opposition testimony (#12967)

Madison Rodgers, Mountrail County Clerk of Court, opposition testimony (#13033).

Jill Minette, Director of Human Resources for the City of Fargo, ND, opposition testimony (#13075).

Allen Anderson, Administrator of the Walsh County Health District, opposition testimony (#13135).

Pamela Binder, Human resources career professional and North Dakota citizen, opposition testimony (#13063).

Josh Askvig, State Director for AARP North Dakota, opposition testimony (#13124).

Allen Anderson, Administrator for the Walsh County Health District, opposition testimony (#13133).

Tom Ross, Mayor of the City of Minot, opposition testimony (#13163).

Chris Mahoney, President of the Williston Professional Firefighter Association, opposition testimony (#13160).

Andrew Nyhus, with Americans for Prosperity North Dakota, supportive testimony (#13165).

Dustin Gawrylow, with the North Dakota Watchdog Network, neutral testimony (#13173) (#13174) (#13175) (#13176) (#13177).

Chairman Schauer adjourned the meeting at 11:43 AM.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

HB 1040
1/27/2023

Relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan, relating to a transfer from the legacy earnings fund to the public employees retirement system main plan and the public employees retirement system defined benefit and defined contribution retirement plans, and relating to public employees retirement system retirement plan contribution rates upon reaching full funding.

Meeting called to order by Chairmen Schauer at 10:30 AM.

Chairmen Austen Schauer, Vice Chairmen Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, Mary Schneider. All present.

Discussion Topics:
- Committee work
- Amendments
- Referral to appropriations
- Level percent compensation basis
- Comparison with other employers
- Portability in defined contribution plans

Rep. Lefor proposed an amendment to HB 1040 (#23.0280.03003) and answered questions from the committee (#21214).

Vice Chairman Satrom moved to adopt amendment (#23.0280.03003) to HB 1040.

Seconded by Rep. Steiner.

Chairman Schauer called for a recess at 11:04 AM.

Chairman Schauer reopened the meeting at 11:18 AM.

Chairman Schauer called Jennifer Clark, Senior Counsel for North Dakota Legislative Council, to answer questions from the committee.

Roll Call Vote on moved amendment:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Claire Cory	Y

Representative Jeff A. Hoverson	Y
Representative Jorin Johnson	Y
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Steve Vetter	Y

Motion carries 13-0-0.

Chairman Schauer adjourned the meeting at 11:43 AM.

Phillip Jacobs, Committee Clerk

Prepared by the Legislative Council staff for
Representative Lefor
January 26, 2023

JA
2-3-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1040

Page 1, line 14, replace "an appropriation" with "for a study"

Page 11, remove lines 15 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 9 with:

"**SECTION 11. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

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

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the

contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

JA 2-3-23

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 12. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee.

~~1.~~ ~~Each~~

1. a. As determined by actuarial valuations, each state governmental unit shall contribute to the defined benefit plan an amount ~~equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024~~on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of two hundred forty-six months, beginning January 1, 2026, and continuing through June 30, 2046. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.

   b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.

   c. For a participating member who first enrolls after December 31, 2019, ~~the governmental unit~~a participating political subdivision shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

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

Page 30, remove lines 29 through 31

Page 31, replace lines 1 through 5 with:

"**SECTION 32. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN.** During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 33. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND. The office of management and budget shall transfer $240,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025."

Page 31, line 6, after "54-52-06" insert ", as amended under section 12 of this Act,"

27
2-3-23

Page 31, line 7, replace "2025" with "2026"

Page 31, line 8, replace "2022" with "2024"

Page 31, line 9, after the second comma insert "11, 32"

Page 31, line 9, replace "31" with "33"

Page 31, line 10, replace ", and" with a semicolon

Page 31, line 10, replace "30" with "10, sections 13 through 23"

Page 31, line 10, replace "section 32" with "sections 25 through 31"

Page 31, line 11, after "2025" insert "; and sections 12, 24, and 34 of this Act become effective January 1, 2026"

Renumber accordingly

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

HB 1040
2/3/2023

Relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan, relating to a transfer from the legacy earnings fund to the public employees retirement system main plan and the public employees retirement system defined benefit and defined contribution retirement plans, and relating to public employees retirement system retirement plan contribution rates upon reaching full funding.

Meeting called to order by Chairmen Schauer at 11:40 AM.

Chairmen Austen Schauer, Vice Chairmen Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, Mary Schneider. All present.

- Committee action
- Amendments (23.0280.03003)
-

Representative Vetter moved a DO PASS as amended on HB 1040, and rereferral to the Appropriations Committee. (23.0280.03003)

Seconded by Representative Rohr.

Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Claire Cory	Y
Representative Jeff A. Hoverson	Y
Representative Jorin Johnson	Y
Representative Karen Karls	N
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	Y
Representative Mary Schneider	N
Representative Vicky Steiner	Y
Representative Steve Vetter	Y

Motion carries 11-2-0.

Bill carrier: Representative Louser.

Chairman Schauer adjourned the meeting at 11:48 AM.

Phillip Jacobs, Committee Clerk By: Leah Kuball

REPORT OF STANDING COMMITTEE

HB 1040: Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1040 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "an appropriation" with "for a study"

Page 11, remove lines 15 through 31

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4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

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Page 31, line 8, replace "2022" with "2024"

Page 31, line 9, after the second comma insert "11, 32"

Page 31, line 9, replace "31" with "33"

Page 31, line 10, replace ", and" with a semicolon

Page 31, line 10, replace "30" with "10, sections 13 through 23"

Page 31, line 10, replace "section 32" with "sections 25 through 31"

Page 31, line 11, after "2025" insert "; and sections 12, 24, and 34 of this Act become effective January 1, 2026"

Renumber accordingly

2023 HOUSE APPROPRIATIONS

HB 1040

2023 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Brynhild Haugland Room, State Capitol

HB 1040
2/13/2023

Relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan

5:15 PM Chairman Vigesaa- Meeting was called to order and roll call was taken:

Members present; Chairman Vigesaa, Representative Kempenich, Representative B. Anderson, Representative Brandenburg, Representative Hanson, Representative Martinson, Representative Mitskog, Representative Meier, Representative Mock, Representative Monson, Representative Nathe, Representative J. Nelson, Representative O'Brien, Representative Pyle, Representative Richter, Representative Sanford, Representative Schatz, Representative Schobinger, Representative Strinden, Representative G. Stemen and Representative Swiontek.

Members not Present- Representative Bellew and Representative Kreidt

Discussion Topics:
- Pension Reform Plan
- Closes Current Plan
- Defined Contribution Benefit

Representative Schauer- Introduces the bill and its purpose. (Testimony #20691)

Jennifer Clark, Legislative Council- Further explains the bill. (Testimony #20692)

Majority Leader Lefor- Testifies in favor.

Representative Weisz- Testifies in favor and offers an amendment 23.0280.04001 (Testimony #20695)

Scott Miller Executive Director ND PERS- Answers questions for committee.

Additional Written Testimony- Representative Lefor passed out after the meeting (Testimony #20823)

Chairman Vigesaa Closed the meeting for HB 1040 @ 6:33 PM

Risa Berube, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Brynhild Haugland Room, State Capitol

HB 1040
2/16/2023

Relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan

7:15 PM Chairman Vigesaa- Meeting was called to order and roll call was taken:

Members present; Chairman Vigesaa, Representative B. Anderson, Representative Bellew, Representative Brandenburg, Representative Hanson, Representative Kreidt, Representative Martinson, Representative Mitskog, Representative Meier, Representative Mock, Representative Monson, Representative Nathe, Representative J. Nelson, Representative O'Brien, Representative Pyle, Representative Richter, Representative Schatz, Representative Schobinger, Representative Strinden, Representative G. Stemen and Representative Swiontek.

Members not Present- Representative Kempenich and Representative Sanford

Discussion Topics:
- Amendment

Chairman Vigesaa Brings forward Representative Weisz's amendment.
23.0280.04001 (Testimony #20695)

Committee discussion

7:23 PM Chairman Vigesaa Closed the meeting for HB 1040

Risa Berube, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Brynhild Haugland Room, State Capitol

HB 1040
2/17/2023

Relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan

8:05 AM Chairman Vigesaa- Meeting was called to order and roll call was taken:

Members present; Chairman Vigesaa, Representative B. Anderson, Representative Bellew, Representative Brandenburg, Representative Hanson, Representative Kreidt, Representative Martinson, Representative Mitskog, Representative Meier, Representative Mock, Representative Monson, Representative Nathe, Representative J. Nelson, Representative O'Brien, Representative Pyle, Representative Richter, Representative Sanford, Representative Schatz, Representative Schobinger, Representative Strinden, Representative G. Stemen and Representative Swiontek.

Members not Present- Representative Kempenich,

Discussion Topics:
- Amendment

Representative J. Stemen- Explains the need for the bill and the amendment 23.0280.04001 (Testimony #20695)

Representative J. Stemen Move to adopt the amendment 23.0280.04001

Representative Nathe Seconds the motion.

Committee discussion Roll call vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	A
Representative Bert Anderson	Y
Representative Larry Bellew	Y
Representative Mike Brandenburg	Y
Representative Karla Rose Hanson	N
Representative Gary Kreidt	Y
Representative Bob Martinson	N
Representative Lisa Meier	N
Representative Alisa Mitskog	N
Representative Corey Mock	N
Representative David Monson	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y

Representative Emily O'Brien	Y
Representative Brandy Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Mike Schatz	Y
Representative Randy A. Schobinger	Y
Representative Greg Stemen	Y
Representative Michelle Strinden	Y
Representative Steve Swiontek	Y

Motion Carries 17-5-1.

Representative J. Stemen- Move for a Do Pass as Amended

Representative Nathe- Second the motion

Committee Discussion- Roll call was taken.

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	A
Representative Bert Anderson	Y
Representative Larry Bellew	Y
Representative Mike Brandenburg	Y
Representative Karla Rose Hanson	N
Representative Gary Kreidt	N
Representative Bob Martinson	N
Representative Lisa Meier	N
Representative Alisa Mitskog	N
Representative Corey Mock	N
Representative David Monson	N
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Emily O'Brien	N
Representative Brandy Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Mike Schatz	N
Representative Randy A. Schobinger	Y
Representative Greg Stemen	Y
Representative Michelle Strinden	Y
Representative Steve Swiontek	Y

Motion Carries 13-9-1 Representative Louser will carry the bill.

8:42 AM Chairman Vigesaa Closed the meeting for HB 1040

Risa Berube, Committee Clerk

Prepared by the Legislative Council staff for
Representative Weisz
February 13, 2023

2
2-17-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1040

Page 1, line 1, after the third comma insert "54-52.6-02.2,"

Page 1, line 2, remove "and"

Page 1, line 2, after "54-52.6-22" insert ", and 54-52.6-23"

Page 1, line 12, replace "section" with "sections"

Page 1, line 12, after "54-52-06.5" insert "and 54-52.6-03"

Page 1, line 14, after "funding" insert "and balance transfer when opting to participate in the defined contribution plan"

Page 17, line 24, after "**Election**" insert "**<u>through December 31, 2024</u>**"

Page 22, after line 10, insert:

"**SECTION 19.** Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:

<u>54-52.6-02.2. Election after December 31, 2024 - Additional employer contribution.</u>

<u>1.</u> <u>As used in this section, "eligible employee" means a permanent state employee who on January 1, 2025, is a participating member of the public employees retirement system main system plan under chapter 54-42, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.</u>

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

<u>a.</u> <u>An election under this section made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable.</u>

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

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

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

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

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

Page 32, after line 5, insert:

"**SECTION 32.** Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:

54-52.6-23. Savings clause - Plan modification.

If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules."

Page 32, line 6, replace "Section" with "Sections"

Page 32, line 6, after "54-52-06.5" insert "and 54-52.6-03"

Page 32, line 6, replace "is" with "are"

Page 32, line 22, replace "32" with "34"

Page 32, line 22, replace "33" with "35"

Page 32, line 23, replace "23" with "24"

Page 32, line 23, replace "25" with "26"

Page 32, line 24, replace "31" with "33"

Page 32, line 24, replace "24" with "25"

2A 2-17-23

Page 32, line 24, replace "34" with "36"

Renumber accordingly

LA
2-17-23

REPORT OF STANDING COMMITTEE

HB 1040, as engrossed: Appropriations Committee (Rep. Vigesaa, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 9 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1040 was placed on the Sixth order on the calendar.

Page 1, line 1, after the third comma insert "54-52.6-02.2,"

Page 1, line 2, remove "and"

Page 1, line 2, after "54-52.6-22" insert ", and 54-52.6-23"

Page 1, line 12, replace "section" with "sections"

Page 1, line 12, after "54-52-06.5" insert "and 54-52.6-03"

Page 1, line 14, after "funding" insert "and balance transfer when opting to participate in the defined contribution plan"

Page 17, line 24, after "**Election**" insert "**through December 31, 2024**"

Page 22, after line 10, insert:

"**SECTION 19.** Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:

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

1. As used in this section, "eligible employee" means a permanent state employee who on January 1, 2025, is a participating member of the public employees retirement system main system plan under chapter 54-42, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.

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

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

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

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

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

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

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

Page 32, after line 5, insert:

"**SECTION 32.** Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:

54-52.6-23. Savings clause - Plan modification.

If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules."

Page 32, line 6, replace "Section" with "Sections"

Page 32, line 6, after "54-52-06.5" insert "and 54-52.6-03"

Page 32, line 6, replace "is" with "are"

Page 32, line 22, replace "32" with "34"

Page 32, line 22, replace "33" with "35"

Page 32, line 23, replace "23" with "24"

Page 32, line 23, replace "25" with "26"

Page 32, line 24, replace "31" with "33"

Page 32, line 24, replace "24" with "25"

Page 32, line 24, replace "34" with "36"

Renumber accordingly

2023 SENATE STATE AND LOCAL GOVERNMENT

HB 1040

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

HB 1040
3/9/2023

Relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan; to provide for a study; provide for a transfer; provide for application; provide an effective date.

10:54 AM Chair Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:
- Benefits plan closures
- Political subdivisions participation
- Defined contribution plan
- 457 plan
- Pensions

Jennifer Clark, Legislative Council, testified neutral and went through the bill #23191.

Rep Lefor, Dist 37, testified in support. #23365

Andrew Nyhus, Americans for Prosperity, testified in support #23002.

Ryan Frost, Reason Foundation, testified in support. #23461

Janilyn Murtha, Retirement/Investment Office, Teachers' Fund for Retirement, testified neutral #23276.

Maureen Storstad, Finance Dir City of Grand Forks testified opposed #23122.

Tangee Bouvette, Grand Forks, ND testified opposed with no written testimony.

Jamison Fuqua, Grand Forks, ND testified opposed #23146.

Kendall Killian, Minneapolis, MN, National Public Coalition, testified opposed. #23596

Matt Oderman, Towner County Commissioner, testified opposed with no written testimony.

Additional written testimony:
David Krebsbach, Vice Chancellor of Administrative Affairs & Chief Financial Officer for the ND University System, neutral #23042
Darrel Lund, West Fargo, ND opposed #23260.
Amy Nelson, Bismarck, NBD opposed #23248.
Samantha Harrison, Mandan, ND opposed #23220.
Tom Ross, Mayor of Minot, ND opposed #23207
Sparb Collins, retired employee opposed #22710
Lisa Jundt, Minot, ND opposed #23207
Jeff Kasper, Alaska Public Employees Assoc. opposed #23112
Josh Askvig, Director of ND AARP opposed #23141

12: 25 PM Chair Roers closed the hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

HB 1040
3/9/2023

Relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participation in the defined contribution plan; provide for a study; provide for a transfer; provide for application; provide an effective date.

2:53 PM Chair Roers reopened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:
- Payment mode
- De risking
- Closed plans
- Target date fund option
- Bond rating

Scott Miller, Dir Public Employee Retirement System, testified opposed #23272.

Derek Hovein, Chief Financial for Public Employee Retirement System, answered questions.

Scott Miller continued testifying.

Darren Schimke, ND Firefighters, E Grand Forks, ND, testified opposed #23266.

Gordy Smith, retired state auditor office employee, testified opposed. #23388

Pam Sharp, Coalition for Retirement Stability, testified opposed. #23481

Nick Archuleta, ND United, testified opposed. #23092

Sharon Schiermeister, retired state employee, Hazelton, ND, testified opposed #23239.

Gary Feist, employee state auditor office, Bismarck, ND testified opposed #23242.

Zeny Aqullana, Sacramento, CA, testified neutral to answer questions #23206.

4:45 PM Chair Roers closed the hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

HB 1040
3/23/2023

Relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan; to provide a study; provide for a transfer; provide for application; provide an effective date.

2:42 PM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:
- Committee action

Scott Miller, Director Teacher Retirement Fund, answered a question by Chair Roers.

Sen Cleary moved a DO NOT PASS.

Sen Braunberger seconded the motion.

Senators	Vote
Senator Kristin Roers	N
Senator Jeff Barta	N
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

ROLL CALL VOTE: YES – 4 NO – 2 Absent – 0 Motion PASSED

Sen Cleary will carry the bill.

2:49 PM Chair Roers adjourned the meeting.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

HB 1040
3/28/2023

Relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan; relating to a transfer from the legacy earnings fund to the public employees retirement main plan and the public employees retirement system defined benefit and defined contribution retirement plans; relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan; to provide for a transfer; provide for application; provide and effective date.

4:05 PM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:
- Committee action

Sen Estenson moved to reconsider HB 1040. Sen Lee seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Rep Weisz brought forth amendments LC 23.0280.05011 and LC 23.0280.05013. #26921, #26920

Sen Estenson moved amendment 23.0280.05011. Sen Barta seconded.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	N
Senator Sean Cleary	N
Senator Judy Estenson	Y
Senator Judy Lee	N

VOTE: YES – 3 NO – 3 Absent – 0 Motion FAILED

Sen Braunberger moved a DO NOT PASS.

Sen Cleary seconded.

Senators	Vote
Senator Kristin Roers	N
Senator Jeff Barta	N
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	N
Senator Judy Lee	Y

VOTE: YES – 3 NO – 3 Absent – 0 Motion FAILED

Sen Cleary moved pass out without committee recommendation.

Sen Braunberger seconded.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Sen. Roers will carry the bill.

4:40 PM Chair Roers adjourned the

meeting. *Pam Dever, Committee Clerk*

REPORT OF STANDING COMMITTEE

HB 1040, as reengrossed: State and Local Government Committee (Sen. K. Roers, Chairman) recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1040 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

2023 SENATE APPROPRIATIONS

HB 1040

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1040
4/11/2023

A BILL for an Act relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan relating to a transfer from the legacy earnings fund to the public employees retirement system main plan and the public employees retirement system defined benefit and defined contribution retirement plans; relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan; to provide for a study; to provide for a transfer; to provide for application; and to provide an effective date.

3:28 PM Chairman Bekkedahl opened the hearing on HB 1040.

Members present: Senators Bekkedahl, Krebsbach, Burckhard, Davison, Dever, Dwyer, Erbele, Kreun, Meyer, Roers, Schaible, Sorvaag, Wanzek, Rust, and Mathern.

Members absent: Senator Vedaa

Discussion Topics:
- Public employment retirement system
- Main plan
- Deferred compensation plan
- Defined compensation plan
- Defined contribution plan
- Proper funding
- Annuity option
- Effective date
- Proposed amendments
- Proposed study

3:29 PM Representative Mike Lefor, introduced the bill, no written testimony.

3:37 PM Jennifer Clark, Legislative Council, introduced the bill by section, testimony #27453.

3:42 PM Levi Kinnischtzke, Legislative Council (LC), answered questions from the committee, no written testimony,

4:06 PM Jennifer Clark introduced amendment LC 23.0280.05021, testimony # 27454.

4:07 PM Levi Kinnischtzke, Legislative Council, explained the appropriation aspect of amendment LC 23.0280.05021, testimony # 27454, #27525, #27526.

4:12 PM Representative Robin Weisz, introduced an amendment LC 23.0280.05020, testimony # 27472.

4:17 PM Representative Robin Weisz, introduced a Representative LaFor amendment similar but has one slight difference as the implementation date, no written testimony.

4:20 PM Senator Sean Cleary, introduced an amendment and a second amendment, and a third amendment, and a fourth amendment, and a fifth amendment, testimony #27460, #27459, #27465, #27461, #27462, #27463, #27464, #27466, #27467, #27468, and #27469, #27470.

4:30 PM Senator Tim Mathern, introduced amendment LC 23.0280.05017, testimony #27471.

4:47 PM Chairman Bekkedahl closed the hearing.

Kathleen Hall, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1040
4/12/2023

A BILL for an Act relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan relating to a transfer from the legacy earnings fund to the public employees retirement system main plan and the public employees retirement system defined benefit and defined contribution retirement plans; relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan; to provide for a study; to provide for a transfer; to provide for application; and to provide an effective date.

11:08 AM Chairman Bekkedahl opened the meeting on HB 1040.

Members present: Senators Bekkedahl, Krebsbach, Burckhard, Davison, Dever, Dwyer, Erbele, Kreun, Roers, Schaible, Sorvaag, Vedaa, Wanzek, Rust, and Mathern.

Members absent: Senator Meyer

Discussion Topics:
- Public employment retirement system
- Main plan
- Deferred compensation plan
- Defined compensation plan
- Defined contribution plan
- Proper funding
- Annuity option
- Effective date
- Proposed amendments
- Proposed study
- Committee work

11:09 AM Senator Bekkedahl, re-introduced the amendment proposed by Senator Hogue, LC # 23.0280.05021, testimony # 27500.

11:14 AM Jennifer Clark, Legislative Council, answered questions from the committee, no written testimony.

11:18 AM Senator Davison moved to adopt AMENDMENT 23.0280.05021.
Senator Schaible seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	N
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	Y
Senator Scott Meyer	AB
Senator Jim P. Roers	Y
Senator David S. Rust	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	Y

Motion passed 14-1-1.

11:21 AM Senator Tim Mathern, introduced amendment LC 23.0280.05017, testimony #27471.

11:21 AM Senator Mathern moved to adopt AMENDMENT 23.0280.05017 only as to the study language of the amendment, not the whole hog-house effect.
Senator Davison seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	Y
Senator Scott Meyer	AB
Senator Jim P. Roers	Y
Senator David S. Rust	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	N
Senator Terry M. Wanzek	Y

Motion passed 14-1-1.

11:24 AM Senator Davison moved DO PASS AS AMENDED.
Senator Schaible seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	N
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	N
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	N
Senator Tim Mathern	N
Senator Scott Meyer	AB
Senator Jim P. Roers	Y
Senator David S. Rust	N
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	N

Motion passed 9-6-1.

Additional Testimony: 27492, 27493, 27494, 27528, 27529

Senator K. Roers will carry the bill.

11:35 AM Chairman Bekkedahl closed the meeting.

Kathleen Hall, Committee Clerk

Prepared by the Legislative Council staff for
the Senate Appropriations Committee
April 12, 2023

MG
4/13/23
1063

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 5, remove "section 6-09.4-10.1,"

Page 1, line 6, remove "21-10-13,"

Page 1, line 10, remove "and"

Page 1, line 10, after "54-52.6-19" insert ", and 57-51.1-07.5"

Page 1, line 10, remove "a transfer from the"

Page 1, line 11, remove "legacy earnings fund to the public employees retirement system main plan and"

Page 1, line 12, after "plans" insert "and the state share of oil and gas taxes"

Page 1, line 15, after "a" insert "legislative management"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 10

Page 2, remove lines 15 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 13

Page 13, line 14, remove "two hundred"

Page 13, line 15, replace "forty-six months" with "thirty and one-half years"

Page 13, line 16, replace "2046" with "2056"

Page 22, line 15, replace "January 1, 2025" with "December 31, 2024"

Page 24, line 24, remove "The board shall follow"

Page 24, remove lines 25 through 30

Page 27, line 2, overstrike "shall"

Page 27, line 2, after "promptly" insert "shall"

Page 27, line 11, after the second underscored comma insert "and an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 14, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 28, after the second underscored comma insert "and for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 28, line 2, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 30, line 19, after "54-52.6-02" insert "or 54-52.6-02.2"

2083

Page 32, line 16, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 33, after line 28, insert:

"**SECTION 31. AMENDMENT.** Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.5. State share of oil and gas taxes - Deposits.

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred million dollars into the state general fund;

2. The next two hundred million dollars into the tax relief fund;

3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;

4. The next two hundred million dollars into the state general fund;

5. The next ten million dollars into the lignite research fund;

6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars;

7. The next four hundred million dollars into the strategic investment and improvements fund;

8. The next sixty-five million dollars to the public employees retirement fund for the main system plan;

9. The next fifty-nine million seven hundred fifty thousand dollars, or the amount necessary to provide for twice the amount of the distributions under subsection 2 of section 57-51.1-07.7, into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~9.~~10. The next one hundred seventy million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~10.~~11. The next twenty million dollars into the airport infrastructure fund; and

~~11.~~12. Any additional revenues into the strategic investment and improvements fund."

Page 34, after line 6, insert:

3 of 3

"**SECTION 34. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM MAIN RETIREMENT PLAN.** During the 2023-24 interim, the legislative management shall study best practices for public employee retirement plans, including defined benefit plans, defined contribution plans, and hybrid plans such as side-by-side hybrid plans, cash benefit plans, and stacked hybrid plans. The study must include development of legislation to implement the retirement plan best suited to meet the needs of the state, political subdivisions, and public employees. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Page 34, line 9, replace "$240,000,000" with "$135,000,000"

Page 34, line 14, replace "12" with "10"

Page 34, line 16, replace "1, 3, 11, 34 and 35" with "9, 31, 33, 34, and 35"

Page 34, line 17, replace "July" with "August"

Page 34, line 17, remove "section 2,"

Page 34, line 17, replace "4" with "1"

Page 34, line 17, replace "10" with "8"

Page 34, line 17, replace "13" with "11"

Page 34, line 17, replace "24" with "22"

Page 34, line 17, remove "and"

Page 34, line 17, replace "26" with "24"

Page 34, line 18, replace "33" with "30, and section 32"

Page 34, line 18, replace "12, 25" with "10, 23"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1040, as reengrossed: Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed HB 1040 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 5, remove "section 6-09.4-10.1,"

Page 1, line 6, remove "21-10-13,"

Page 1, line 10, remove "and"

Page 1, line 10, after "54-52.6-19" insert ", and 57-51.1-07.5"

Page 1, line 10, remove "a transfer from the"

Page 1, line 11, remove "legacy earnings fund to the public employees retirement system main plan and"

Page 1, line 12, after "plans" insert "and the state share of oil and gas taxes"

Page 1, line 15, after "a" insert "legislative management"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 10

Page 2, remove lines 15 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 13

Page 13, line 14, remove "two hundred"

Page 13, line 15, replace "forty-six months" with "thirty and one-half years"

Page 13, line 16, replace "2046" with "2056"

Page 22, line 15, replace "January 1, 2025" with "December 31, 2024"

Page 24, line 24, remove "The board shall follow"

Page 24, remove lines 25 through 30

Page 27, line 2, overstrike "shall"

Page 27, line 2, after "promptly" insert "shall"

Page 27, line 11, after the second underscored comma insert "and an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 14, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 28, after the second underscored comma insert "and for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 28, line 2, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 30, line 19, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 32, line 16, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 33, after line 28, insert:

"**SECTION 31. AMENDMENT.** Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.5. State share of oil and gas taxes - Deposits.

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred million dollars into the state general fund;

2. The next two hundred million dollars into the tax relief fund;

3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;

4. The next two hundred million dollars into the state general fund;

5. The next ten million dollars into the lignite research fund;

6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars;

7. The next four hundred million dollars into the strategic investment and improvements fund;

8. The next sixty-five million dollars to the public employees retirement fund for the main system plan;

9. The next fifty-nine million seven hundred fifty thousand dollars, or the amount necessary to provide for twice the amount of the distributions under subsection 2 of section 57-51.1-07.7, into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~9.~~10. The next one hundred seventy million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~10.~~11. The next twenty million dollars into the airport infrastructure fund; and

~~11.~~12. Any additional revenues into the strategic investment and improvements fund."

Page 34, after line 6, insert:

"**SECTION 34. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM MAIN RETIREMENT PLAN.** During the

2023-24 interim, the legislative management shall study best practices for public employee retirement plans, including defined benefit plans, defined contribution plans, and hybrid plans such as side-by-side hybrid plans, cash benefit plans, and stacked hybrid plans. The study must include development of legislation to implement the retirement plan best suited to meet the needs of the state, political subdivisions, and public employees. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Page 34, line 9, replace "$240,000,000" with "$135,000,000"

Page 34, line 14, replace "12" with "10"

Page 34, line 16, replace "1, 3, 11, 34 and 35" with "9, 31, 33, 34, and 35"

Page 34, line 17, replace "July" with "August"

Page 34, line 17, remove "section 2,"

Page 34, line 17, replace "4" with "1"

Page 34, line 17, replace "10" with "8"

Page 34, line 17, replace "13" with "11"

Page 34, line 17, replace "24" with "22"

Page 34, line 17, remove "and"

Page 34, line 17, replace "26" with "24"

Page 34, line 18, replace "33" with "30, and section 32"

Page 34, line 18, replace "12, 25" with "10, 23"

Renumber accordingly

TESTIMONY

HB 1040

#12672

Dear Chairman Schauer and members of the House Government and Veterans Affairs Committee:

Thank you for representing me in the North Dakota legislature. Please oppose closing the NDPERS retirement plan to new hires and do the right thing by keeping the word of previous legislative bodies when they agreed to pay their share of the funding shortfall needed to bring the NDPERS plan to long-term stability.

I would like to take this moment to say that I am proud to have served my whole career providing quality interpretation and education to citizens where I was living. I am a recently retired North Dakota State employee. I worked for the State Historical Society of North Dakota from August 1975 to February 1984, and then from August 2009 to June 2022. It has been a honor to serve North Dakota citizens during both of these stints. Between them I worked for Virginia State government, Minnesota State government, and the National Park Service.

I am able to volunteer to deliver programming and support for the State Historical Society and North Dakota Studies because my pension helps to make my time available. This is important to me now and was important to me before my retirement because I could look forward to sharing my expertise with younger incoming staff who would be professional and proud to be working for our Citizenry. It becomes more and more difficult to recruit and retain professional and proud staff without quality long-term benefits that they deserve.

If you have questions for me, I would be happy to have you contact me at
Erik Holland, 222 West Avenue C, in Bismarck or eshollland@aol.com, or 701 516-6847.

Erik Holland

TESTIMONY IN OPPOSITION OF HB 1039 & HB 1040 RELATING TO THE ND PERS DEFINED BENEFIT PLAN

House Government and Veterans Affairs Committee
Meeting Scheduled at 8:30 AM 1/13/2023.

Honorable Chairman Schauer & House Government and Veterans Affairs Committee Members:

HB 1039 and HB 1040 A BILL relating to the public employees retirement system and to amend section 54-52-02.15 of the North Dakota Century Code, relating to public employees retirement system main plan – Closure to new hires – Multiple plan membership.

I strongly **OPPOSE** closure of the public employees retirement system defined benefit main plan. I currently serve as the Mayor of the City of Wahpeton and as the Richland County Emergency Manager; for 35 years, my entire working life, I have worked in public service. I get up in the middle of the night if a township road washes out, my city experiences severe weather and every time our local volunteer fire department is called to service. I genuinely believe the greatest rewards in life are earned in service to others.

I have frequently been approached to consider working in other states for other agencies; I have not pursued any of those offers because I am committed to my community, my state, and the people I serve. Part of the strength of that commitment comes from knowing I can provide for my family now and when I retire thanks to the security of the ND Public Employees defined benefit plan. I understand the intent of the proposed bills is to fulfill the pension obligations of current enrollees; I can assure you I would have pursued and accepted employment outside the State of North Dakota with an agency that provides a meaningful defined benefit plan if I were not offered one.

To me the difference between defined benefit and defined contribution comes down to trust and dependability or working simply in pursuit of money and opportunity. An employment relationship built on trust and dependability is a strong bond of infinite potential, mutually beneficial to both parties. Without trust and dependability the employment focus will move to money and opportunity – not the most meaningful traits of public service.

Please consider solutions that do not eliminate the defined benefit plan for the next generation of public employees.

Submitted with high regard;

Brett D. Lambrecht

Brett Lambrecht, Mayor
City of Wahpeton

Chairman Schauer and members of the North Dakota House Government and Veterans Affairs Committee, my name is Dana Henry and I am a Compliance Officer with the Office of State Tax Commissioner. The testimony I am providing is in opposition to HB 1040.

I am the daughter of two retired educators who currently draw on Oregon PERS benefits. They have been able to comfortably retire at ages 53 and 55 from their public service careers and have been drawing on these deserved benefits since 2008 and 2010 respectively. Because of their pension and now social security benefits, they have not had to take any distributions from their supplemental retirement savings to maintain the same level of lifestyle as when they were working.

The entirety of my professional career has been in the public sector from working with federally funded grant programs, in K-12 education, two-year and four-year higher education, non-profits, and now state government. I have participated as an employee in PERS plans in three states: Oregon, Montana, and North Dakota.

When my husband moved us to North Dakota, I was looking to continue my employment in the public sector. As I reviewed the various job postings that would fit my skill set and industry of work, the defined benefit plan that the State of North Dakota offered as part of the total compensation package was the main/top determining factor in coming to work for the state.

I believe that anyone who works their entire life in public service has earned their retirement security. I saw and continue to see the benefits of a defined benefit plan and am a firm believer that benefits are a key component to recruiting and retaining talent in our agencies.

Closing the PERS plan will eliminate new dollars investing into the fund increasing the likelihood of the fund becoming insolvent and keeping current and future retirees from receiving their full benefits. In addition, without the plan, you lose a competitive edge/offering to new hires with the private sector because the salary ranges offered by the state cannot compete.

I encourage the committee to oppose HB 1040.

Madison Rodgers

Mountrail County Clerk of Court
PO Box 69
Stanley, ND 58784
Phone: (701) 628-2915

January 12, 2023

Dear Chairman Schauer and Government and Veterans Affairs Committee,

My name is Madison Rodgers, and I am the Mountrail County Clerk of Court. I am writing in opposition to both HB 1039 and HB 1040, which propose closing the defined benefit plan for any new state employees.

Being a public employee is often a thankless job - angry public, no bonuses, and low levels of control. This job does come with its perks however – an important one of them being the benefits, specifically being a part of the defined benefit retirement plan.

I oppose moving toward a DC plan for many reasons. Mainly, if I were to be a part of a DC plan, the value of my retirement will fluctuate due to changes in investments, leaving my future retirement uncertain. Also with a DC plan, the burden of investing is in my hands. One of the main "peaces of mind" that a DB plan gives me is that when I retire I will have a specific, guaranteed amount that I will receive the rest of my life—which I and other public employees deserve for our years of serving the public.

I listened to the hearing from the recent Employee Benefits Program Committee on December 13, 2022. One of the things that stuck out to me was that the Retirement Actuarial Consult, Milliman, said that a DB plan was an efficient use of taxpayer dollars while a DC plan was an inefficient use of taxpayer dollars, not to mention DC plans are twice as expensive as DB plans. Funds would have to be deposited into the DB fund to compensate for the lack of funds going in. Those funds could best be used where they are desperately needed for other taxpayer programs/services.

I also noted that Milliman stated a DC plan benefits short-term workers because of its portability, which gives them no incentive to stay. Public employment is not for the faint-hearted and because a DC plan is portable, there is no reason for an employee to stick around, increasing turnover. In the current employee shortage, it will be harder than ever to fill critical public employee positions. A DB plan keeps employees working in public employment long term, which benefits the public by providing them with the experienced service for which they pay taxes.

I am thirty-three years old and have many years of working left. My plan is to retire as a public employee. If these bills pass, I will be at the end of the totem pole for receiving funds from the DB plan. What will be left once it is my turn to finally retire? What will I have to live on after the many years of service that I will have given?

For these reasons, I hope you give a "DO NOT PASS" recommendation to the Legislature.

Please reach out with any questions.

Madison Rodgers

Mountrail County Clerk of Court
PO Box 69
Stanley, ND 58784
Phone: (701) 628-2915

Sincerely,

Ms. Madison Rodgers

Ms. Madison Rodgers
Mountrail County Clerk of Court

January 11, 2023

Dear Chairman, Schauer and members of the House Government and Veterans Affairs Committee:

I am writing my testimony in opposition to closing the North Dakota Public Employees Retirement System (NDPERS) Main Defined Benefit Plan. I am a current participant in the NDPERS Main Plan with Burleigh County. I have read the draft of H.B. #1040/S.B. #1039 and I believe closing the NDPERS Main Defined Benefit Plan to new participants would be detrimental to recruitment for political subdivisions and the state of North Dakota as an employer. I have made my career in the Human Resources field for over twenty-three years now. I am still actively in the Human Resources field as the Human Resource Director for Burleigh County. While I understand the recruitment challenges that Governmental Units face when competing for talent with private employers; I continue to live this challenge every day in my current job; I do not feel that the Governmental Units will gain anything by closing the NDPERS Main Defined Benefit Plan to new hires. I have worked for a couple of larger employers in their employee benefits administration area over my career (Bobcat/Melroe Company & MDU Resources Group, Inc.). I understand the pension funding requirements and the importance of the percentage level of funding in a defined benefit pension plan. I have also experienced what happens when a defined benefit pension plan is closed to new participants. The funding liability for the remaining participants in that pension plan remains, as you already have a certain number of participants that you have the liability of a lifetime annuity benefit that has to be provided by the pension plan. However, you have cut off your main funding source which is the new participant contributions into the pension plan. The funding requirements to the remaining participants of the plan will become an issue. I read where the Legacy sinking and interest fund will have a mechanism that will provide some funding for the NDPERS Main Defined Benefit Plan. However, anything above that funding source will need to come from either the Governmental Units and/or the existing participants in the NDPERS Main Defined Benefits Plan. So as I understand it, their may be extra funding requests made in the future to the Governmental Units (State Agencies and Political Sub Divisions (Counties, etc.)) where they will be required to submit their own fund contributions in order to keep the NDPERS Main Defined Benefit Plan funded at an adequate level. What this will ultimately do is to force the Governmental Units to make a choice and withdraw their participants from the closed NDPERS Main Defined Benefit Plan and enroll those existing participants into the Defined Contribution Plan because they will not be able to afford the extra contributions and payments that are needed in order to keep the closed NDPERS Main Defined Benefit Plan funded. During my career in Human Resources – Employee Benefits, I have witnessed this very thing occur in a few different cooperatives that closed their pension plans. I do not believe this is a fair way to treat the long- time employees that have been loyal to our Governmental Units.

I worked as a State of North Dakota employee for NDPERS two different timeframes within my career. From 2004 to 2006 and from 2019 to 2020. I have been with Burleigh County since 2020. I understand the NDPERS Main Defined Benefit Plan very well. I have been aware of the funding issues since 2004. I also know that there have been numerous suggestions on how to increase the funding levels to the NDPERS Main Plan made over the years. The past legislators refused to fully address the funding suggestions always referring to the next legislative session. Now we are at a critical point for funding the financial liabilities for the NDPERS Main Defined Benefit Plan.

I mentioned that I worked for NDPERS in 2004 and left. I went back to the private sector as I was offered more money. Over the years in the private sector, I made more money than I would have had I stayed at NDPERS as an employee. However, when you become older and your retirement and healthcare needs become more apparent to you and your family, you reconsider whether compensation is everything. Remember, the more compensation you make the more the IRS will take for taxes. I did come back to NDPERS as an employee and then to Burleigh County as an employee for the NDPERS Main Defined Benefit Plan and the healthcare benefits.

The fact of the matter is this: I listened as legislators discussed the reason, they want to close the NDPERS Main Defined Benefit Plan and convert any new hires after that to the Defined Contribution Plan. It was the pension funding, however, they also used employee attraction as a reason to have a defined contribution plan rather than a defined benefit plan. As an HR professional, I do not agree. Your employees have a choice of where they want to work. It is no secret that we have more open jobs in the state of North Dakota than we have people to fill them. If I was a young professional under the age of 26, I really would not care about Health Insurance because I am covered under my parent's health insurance plan. I am also not thinking about my life in retirement. A very small percentage of young employees have retirement at the top of their to do list. The top of that to do list looks more like a car payment, a house payment and daycare for children and also to provide food on the table. Normal household expenses override retirement contributions if the employee has a choice. I have witnessed this both personally and throughout my career. That is not really a bad thing as long as when an employee gets older, they do make retirement contributions into their retirement plan.

Not all employees are comfortable with retirement investments. I know a good share of employees are very scared to even participate because they do not want to choose the wrong investment and lose their hard-earned money. The main difference between a defined benefit plan and a defined contribution plan is who is in charge of the investments. In a defined benefit plan, you are taken care of, and you do not have to pay an investment advisor to manage your investments so you can afford to retire and have a monthly annuity that you can live from. In a defined contribution plan, if you are not educated on investments and watching your investments and rebalancing your account up against the changing market conditions, you will not have enough money saved in your account to get a monthly annuity payment. Even though you may pay an investment advisor to handle your investments, you are the one that is still liable for the gains and losses on the investments in your defined contribution plan. You will live from the balance in your defined contribution account until it has been depleted.

An employee will have to work longer instead of enjoying retirement. As technology changes; employees toward the end of their careers; do not always adapt well to the technology changes. This could lead to skills gaps in critical positions at Governmental Units.

Converting to a Defined Contribution Plan will only make it easier for an employee to move between employers from the Governmental Unit to the private sector. I highly doubt it will have the talent attraction result that was discussed by the committee that wants to close the NDPERS Main Defined Benefit Plan. What it will do is take the Governmental Unit's advantage of a better benefit package away and make it harder to compete with private industry. The Governmental Units will be forced to pay more in salary in order to fill open positions. Otherwise, those positions will go unfilled. Training costs will increase as employee retention will still be an issue because we just made it easier for an employee that we attracted to go down the street to another employer for a little bit more money. The benefits will remain neutral at that point.

I respectfully oppose closing the NDPERS Main Defined Benefit Plan and I wanted to make my wishes known to you and the rest of the House Government and Veteran Affairs Committee so you can make an informed decision on the retirement plan as it will change how we will need to recruit and pay employees in Governmental Units going forward if the NDPERS Defined Benefit Plan is closed.

Thank you for your time!

Sincerely,

Pamela J. Binder
Human Resources Career Professional
MM/HR, MBA, SPHR & SHRM – SCP

pjbinder@nd.gov

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200

City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1039 & HOUSE BILL 1040
Government and Veterans Affairs Committee
January 13, 2023

Maureen Storstad, Finance and Administrative Services Director
City of Grand Forks, ND

Mr. Chairman and members of the committee, this testimony is written on behalf of Tangee Bouvette, Human Resources Director and myself, Maureen Storstad, Finance and Administrative Services Director for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition to this legislation.

The NDPERS retirement system is an excellent defined benefit pension plan and it is our top retention and recruitment tool for the City of Grand Forks.

The City of Grand Forks, in general, has supported previous efforts to support the NDPERS plan to bring this plan to a healthier funding percentage level, and we would continue to support the NDPERS plan if the State were to consider keeping this plan open to new employees. The City of Grand Forks has supported past legislation to incrementally increase contribution rates over the last 12+ years as the City has been able to manage these incremental increases through budget planning.

Conversely, the City of Grand Forks is against House Bill 1039 and House Bill 1040, which would close the NDPERS main plan to new employees. As stated previously, it is the most important recruitment and retention tool that we have as a municipality.

The narrative that exists to support these two bills is that this younger generation of employees doesn't care about defined benefit pensions and that employees just want a benefit that is portable as jobs are seen as short-term ventures. I can tell you that has not been the experience with City of Grand Forks employees. City employees do care about defined benefit pension plans. The City's typical job applicant are individuals that are looking for long-term career paths that can provide financial stability along with work-life integration. Providing for a secure retirement is a key component of a sustainable career for employees providing essential community services.

These type of pension plans need to be viewed with a long-term perspective. As long as the plan would remain open, there is not a need to be fully funded today, but to show a plan that reflects a positive trajectory toward fully funding. I believe the State still has this ability with the existing NDPERS main plan as long as it is not closed to new employees.

In reviewing the information presented by Milliman at the July 21st, 2022 interim legislative committee meeting, a baseline was presented along with a revised projection at the newly adopted, more conservative, 6.5% assumed rate of return. This was used in comparison and showed the impact of closing the plan to new employees. It is very expensive to close a defined benefit plan as new employees do not contribute toward funding of the plan as the plan was intended. Therefore, the numbers show, based on performance numbers at the time, the following:

- **Keep DB Plan open at 6.5% assumed earnings rate**:

  74% funded after 30 years (basically holds its own, but funding percentage does not improve) (This is with no additional annual cash infusion)

  87% funded after 30 years (with $25M additional annual cash infusion)

- **Close the DB Plan to new employees and same 6.5% assumed earning rate:**

  43% funded after 30 years (with $25M additional annual cash infusion)

The City of Grand Forks opposes the closure of the NDPERS main pension plan. We would support making incremental contribution changes to the NDPERS plan and monitoring funding every two years, in order to get this plan on a positive trajectory toward healthier funding. It is for the reasons stated above that we oppose the passage of House Bill 1039 and House Bill 1040 as these bills are not in the best interests of the City of Grand Forks. Thank you for your time and consideration. We respectfully ask for a DO NOT PASS on House Bill 1039 and House Bill 1040.

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City of Grand Forks
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TESTIMONY ON HOUSE BILL 1039 & HOUSE BILL 1040
Government and Veterans Affairs Committee
January 13, 2023

Jamison Fuqua, Lead Fleet Maintenance Mechanic
City of Grand Forks, ND

Mr. Chairman and members of the committee, My name is Jamison Fuqua and I am the Lead Fleet Maintenance Mechanic for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express my opposition to this legislation.

When I was looking at this position with the City of Grand Forks, one of the main attractions was the NDPERS plan. As a newer employee with the City of Grand Forks I am planning long term for my career and the pension plan with the City was second to none.

I could have taken a job with better pay, but the long-term stability that I get with the NDPERS plan with the city was one of the main selling points to taking the job.

I understand that there are costs at the state and local level associated with this plan, but please understand that this plan does impact the ability to find and retain employees.

I stand in opposition to this legislation.

Thank you.

Testimony Presented on HB 1039 and HB 1040 to the

House Government and Veterans Affairs Committee

By

Jill Minette, SPHR, SHRM-SCP, IPMA-SCP

Director of Human Resources

City of Fargo

January 11, 2023

This statement expresses opposition to House Bill 1039 and House Bill 1040 that propose closing the North Dakota Public Employee Retirement System's (NDPERS) Defined Benefit Plan and converting to a defined contribution system.

The City of Fargo has participated in the NDPERS Defined Benefit Plan since 2008. Currently, approximately 620 employees or 64% of our workforce participates in the NDPERS Defined Benefit Plan.

The NDPERS Defined Benefit Plan has been a cornerstone of the benefit package offered to City of Fargo employees. As a public employer, we face similar challenges to the private sector in attracting and retaining a highly skilled workforce. While it is increasingly difficult to remain competitive with private sector compensation, the defined benefit plan has provided an essential tool in recruiting qualified employees. As importantly, the NDPERS Defined Benefit Plan has been essential in the retention of trained, experienced employees within our workforce.

For a prospective employee who is considering whether to accept a position within the public sector or private sector, the retirement plan can be a major factor in their decision-making. A defined contribution plan, similar to a 401k commonly offered in private sector, is unlikely to tip the scales toward public employment for a prospective employee as they compare the benefit package of a public employer versus a private employer. Likewise, employees working under a defined contribution plan are less likely to stay with their public employer if a similar retirement plan, such as a 401k, is being offered in the private sector position.

The employees of the City of Fargo, as well as state and local government employees throughout the state, play an integral role in creating safe, thriving and growing communities that support the retention of citizens, attract individuals and families to move to our state as well as supporting economic development throughout the state. The ability to attract and retain a highly skilled and talented workforce is essential to supporting our communities and state and to continue providing the best public service possible. The NDPERS Defined Benefit Plan is an important component in supporting public workforce stability within communities throughout the state.

The NDPERS Defined Benefit Plan is an essential benefit offering to current and prospective City of Fargo employees. Without this crucial benefit, we believe the draw to public employment may diminish and the workforce challenges within the public sector, here in Fargo as well as throughout the state, will become even greater.

The NDPERS Defined Benefit Plan incentivizes public employees to reach long periods of employment and in some cases working their entire careers with their current employers. Additionally, for those public sector employees who are looking to make a change, the NDPERS Defined Benefit Plan incentives employees to remain in the public sector within North Dakota with the ability to transfer and retain their service.

The importance of the NDPERS Defined Benefit Plan for the City of Fargo as well as public employers throughout the state cannot be overstated. The NDPERS Defined Benefit Plan is essential in order to attract and retain a talented workforce and to support workforce stability in public employment throughout the state.

The City of Fargo strongly encourages your committee to recommend “Do Not Pass” for this bill.

Thank you for your consideration.

NORTH DAKOTA UNIVERSITY SYSTEM

ACCESS. INNOVATION. EXCELLENCE.

HB1040

House Government and Veterans Affairs Committee
January 13, 2023

David Krebsbach, Vice Chancellor of Administrative Affairs and CFO, NDUS
701.328.4116 | david.krebsbach@ndus.edu

Chair Schauer and members of the House Government and Veterans Affairs Committee. My name is David Krebsbach, and I serve as the Vice Chancellor of Administrative Affairs & Chief Financial Officer for the North Dakota University System (NDUS). I am here today on behalf of the NDUS and its eleven institutions to provide neutral testimony related to HB1040.

HB1040 closes the NDPERS Defined Benefit plan (DB) to new members effective January 1, 2025. Existing DB participants will remain in the plan; however, the NDUS and its 11 institutions will be obligated to pay an additional contribution, the Actuarily Determined Contribution (ADEC), in addition to the regular retirement contributions for about 20 years. HB1040 does not include a state appropriation with which to make these ADEC payments.

NDUS has approximately 2,400 employees participating in the DB Plan. These individuals work in the Technical & Paraprofessional, Office Support, Crafts/Trades and Services broadband classifications. The estimated minimum cost of the ADEC for these employees is $19.9 million for the biennium. 2023-2025 per institution amounts are as follows:

	PERS Defined Benefit Plan Closure HB1040		
	HB1040 - Fiscal Note 2023-25 - NDUS Cost		
NDUS Entity	General Fund	Special Fund	Total
NDUSO	$ 535,552	$ 212,309	$ 747,861
BSC	435,544	620,630	1,056,174
LRSC	201,563	265,900	467,463
WSC	119,036	157,894	276,930
UND	1,697,565	5,729,833	7,427,398
NDSU	1,372,595	4,192,975	5,565,570
NDSCS	543,809	626,915	1,170,724
DSU	215,766	248,832	464,598
MaSU	285,299	443,910	729,209
MiSU	384,542	564,738	949,280
VCSU	227,965	226,564	454,529
DCB	133,363	118,072	251,435
Forest Service	343,707	11,087	354,794
Total	**$ 6,496,306**	**$ 13,419,659**	**$ 19,915,965**

The NDUS cannot absorb such a significant expense without a state appropriation that covers the total cost of this change. The alternative would be to use special funding sources, which for higher education are derived from tuition paid by students & their families. Raising the cost of education when families are already struggling to cover increasing prices of fuel, housing, and food would not benefit anyone and may lead to decreased enrollment in post-secondary education. This could in turn negatively impact the number of qualified employees in the ND workforce at a time when employees are desperately needed.

If HB1040 is moved forward, the NDUS respectfully requests the addition of a general fund appropriation to cover the $19.9 million in increased costs of the ADEC.

This concludes my testimony. I will stand for questions from Committee members.

House Bill 1040
January 12, 2023
House Government and Veterans Affairs
Josh Askvig, State Director AARP North Dakota

Chair Schauer and members of the committee,

I'm Josh Askvig, State Director for AARP North Dakota. AARP is a nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families, with nearly 38 million members nationwide and our 83,000 members in North Dakota. We're here today to offer testimony in opposition to House Bill 1040.

Financial and health security are key components of our advocacy agenda. AARP strongly believes that all individuals have the right to be self-reliant and live with dignity in retirement. We further believe that Americans of all ages are faced with a crisis where the goal of achieving an adequate and secure retirement is becoming increasingly difficult.

Following the Great Recession, there was widespread discussion and consideration around converting from traditional defined benefit plans to defined contribution plans. Yet, nearly every state retained a traditional pension as a component of the primary retirement benefit for most public employees. We followed this bill during the Interim Retirement Committee, offered similar comments during that process and have listened to the subsequent discussions.

Upon review we urge the state to exercise similar caution as other states who have explored this change. Modifying retirement plan designs can have unintended outcomes. These following cost related reasons should be noted:

- ***Does not reduce legacy plan liabilities.*** Closing off the pension plan to new employees does not resolve any existing unfunded obligations. In fact, it diverts contributions that would otherwise go into the plan and earned investment income; it requires higher contributions as a percentage of payroll for the legacy plan; and, as the actuarial analysis on this bill and others has shown, necessitates accelerated near-term additional payments to eliminate the unfunded pension liability. (Enduring Challenges: Examining the Experiences of States that Closed Pension Plans, NIRS, August 2019)

- ***Increases benefit costs.*** For any given level of retirement income, defined contribution plans cost significantly more than a traditional pension. Pension plans have economies of scale that cost less to administer. Their pooled assets can achieve higher investment returns due to professional management, more diversified portfolios, longer time-horizons and lower fees. Longevity risk is also pooled, which is inherently less expensive than what individuals would need to accumulate to ensure they do not outlive their savings. (Still a Better Bang for the Buck, National Institute on Retirement Security, December 2014). Furthermore, two plans are more costly than one. Higher administrative costs of a new defined contribution plan would be in addition to the traditional pension that must still be maintained for current workers and retirees. (Look Before you Leap: The Unintended Consequences of Pension Freezes, NIRS, October 2008)

- ***Creates workforce challenges and expenses.*** Retaining employees promotes the efficient delivery of public services, allowing taxpayers to maximize the training and experience invested in public employees and an orderly progression of personnel. Pension plans are an important workforce management tool to meet this objective. State and local governments that closed their traditional pensions saw increased turnover, workforce challenges, and training expenses. (Retirement Reform Lessons: The Experience of Palm Beach Public Safety Pensions, NIRS, February 2018; The Cost of Teacher Turnover in Alaska, Center for Alaska Education Policy Research, March 2017)

Beyond the costs of switching from a traditional pension to a defined contribution plan, additional policy considerations when transitioning pension plans for new public employees in North Dakota.

- ***Traditional pensions are economic drivers for Main Street America.*** Economic gains attributable to pensions in the U.S. are substantial. Their long-time horizon enables monthly benefits to be distributed on time and in full, even during market shocks and economic declines, to retirees in virtually every community across the country. In North Dakota, retiree spending of these benefits in 2018 generated $805.8 million in total economic output, supporting 4,610 jobs across the state. Pension spending also added $110.7 million to government coffers at the federal, state and local levels. (AARP-In-The-States-Snapshot-ND-Public-Employee-Retirement-System 2021). Additionally, North Dakota's rural and small towns benefit from public defined benefit pension plans as most retirees remain in their communities and contribute to the economic stability of the region as their income is both stable and predictable. (Fortifying Main Street: The Economic Benefit of Public Pension Dollars in Small Towns and Rural America, Linea Solutions and NIRS, March 2020).

- ***Defined contribution plans can increase retirement insecurity and reliance on social safety nets***. Moving away from defined benefit plans means that individuals must face the risk of poor investment returns, the risk that they might outlive their assets, and the risk that inflation will erode the value of their income in retirement. **(**Defined Contribution Plans and the Public Sector: An Update, Center for State and Local Government Excellence, April 2014). Defined contribution plans do not provide predictable benefits sufficiently to ensure some retirees will not need access to other government assistance programs (Medicaid, TANF, etc.). Defined contribution plan participants experience different retirement plan success depending on such factors as their level of contribution and investment knowledge and their understanding and appetite for risk.

- ***Most Americans support pensions to retain public employees and compensate for lower pay and higher risks.*** Most Americans believe providing pensions is a good way to recruit and retain public employees. They additionally appreciate that public workers help finance the cost of these benefits and that pensions compensate for comparatively lower pay and higher risk in many public sector jobs. (Americans' Views of State and Local Employee Retirement Plans, NIRS, March 2021).

Thank you.

North Dakota AFL-CIO
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701-526-8787

Testimony of Landis Larson, ND AFL-CIO President
In Opposition to HB 1040
January 13, 2023

Chairperson Schauer and members of the Government and Veterans Affairs Committee:

My name is Landis Larson, President of the North Dakota AFL-CIO. The North Dakota AFL-CIO is the federation of labor unions in North Dakota, representing the interests of all working people in our state.

I am testifying on behalf of the North Dakota AFL-CIO in opposition to House Bill 1040.

The North Dakota AFL-CIO opposes HB 1040 and any other attempts at moving from a defined benefit to a defined contribution retirement plan for any current or future public employees in the state of North Dakota.

As a federation of labor unions, we have hundreds of years of combined experience fighting for secure, dignified retirement for working people in our state, private and public sectors alike. Our Experience is clear and will be no surprise to anyone who has punched a clock for a living:Defined benefit retirement plans are hands down better than defined contribution retirement plans.

We want to recruit and retain the best workforce possible to run the vital daily operations of our state, like cleaning our roads, helping run our government offices, and keeping us safe. To recruit and retain this high caliber workforce we need to make a commitment to the long-term needs of our public servants by offering the highest quality benefits we can, including maintaining our defined benefit plan.

Not only will this help with retention, but the spillover effects into our communities are substantial. Quantitatively, those dollars circulate in our communities, increasing revenues of local business. Qualitatively, we are stronger when our retirees are secure because they are able to fully participate in their community, serving as the bedrocks, and as beacons of hope and pride for the next generation of workers that make North Dakota their home and make service to North Dakota their careers.

Our public employees deserve to retire with dignity and security after a life of service to our state and its citizens.

Along with all of this, the cost to keep the defined benefit plan is less than closing it out and changing to a defined contribution plan.

For all of the reasons stated, we recommend a DO NOT PASS vote on HB 1040 and to allow the NDPERS system to continue working for our public employees past, current, and future.

Respectfully Submitted,
Landis Larson
North Dakota AFL-CIO President

Dear Committee Members,

I am writing in opposition to both HB 1040 and 1039.

As an employer in a rural county in North Dakota and in the field of healthcare, it cannot be overstated how important the NDPERS Pension is as a retention and recruitment tool for our agency. Hiring and retaining employees has become an incredibly challenging issue over the course of the past 4 years, with no signs of stopping. Elimination of the plan for new employees will only exacerbate the situation by further encouraging a revolving door of employees. In smaller counties, paying competitively remains a challenge due to budgetary constraints, so the reliance on high quality benefits is imperative to recruitment and retention.

I believe that the elimination of the NDPERS pension will also have negative effects on the ability of small towns to recruit teachers, law enforcement, and other public positions.

Allen Anderson, Administrator

Walsh County Health District

Dear Committee Members,

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I believe that the elimination of the NDPERS pension will also have negative effects on the ability of small towns to recruit teachers, law enforcement, and other public positions.

Allen Anderson, Administrator

Walsh County Health District

Reason Foundation | Pension Integrity Project

Testimony on North Dakota House Bill 1040: NDPERS Reform

Prepared for: North Dakota House Government and Veterans Affairs Committee

Prepared by: Ryan Frost, Senior Policy Analyst

Date: January 13, 2023

Good afternoon,

My name is Ryan Frost, and I am a senior policy analyst with the Pension Integrity Project at Reason Foundation. Our pension team has played a key technical assistance role on dozens of bipartisan pension reforms across 10 states over the past several years, including major efforts to overhaul and restore the solvency of major state pension systems in Texas, Michigan, Florida, Colorado, New Mexico, Arizona and South Carolina. Prior to joining Reason in 2019, I spent seven years as the research and policy manager for the Law Enforcement Officers and Firefighters Pension System, or LEOFF 2 for short, in Washington state. LEOFF 2 has been one of the top-three best-funded public pension plans since its inception in the mid-1970s, and that's primarily been accomplished by keeping up to date with best practices in pension funding design. Thank you for inviting me to provide our technical analysis of House Bill 1040 based on our experience evaluating pension solvency and design quality nationally, as well as answer any questions the committee may have.

We operated as pro-bono technical assistants during the interim committee process that led to this bill, building an actuarial model for the North Dakota Public Employees Retirement System (NDPERS) to help inform the process. We've thoroughly examined the details of this legislation, as well as the funding history of NDPERS. I have provided several supplemental materials to the committee that I hope are helpful in your consideration of this bill.

The context for the current discussion is the looming insolvency of NDPERS. Today, NDPERS is estimated to be about $1.8 billion underfunded. Even according to a recent report from the National Conference on Public Employee Retirement Systems, an organization that represents and advocates for defined benefit public pension plans, North Dakota is one of just five states that has an unsustainable public pension debt trajectory.

Without any changes, NDPERS will continue to accrue unfunded liabilities, ultimately exhausting its assets in approximately 80 years. HB 1040 would meaningfully address many of the longstanding challenges facing NDPERS, help turn it away from a path of perpetual underfunding and set it on a course to be fully paid off in the next 20 years.

First and most importantly, HB 1040 fixes the systematic underfunding that NDPERS has undergone over the past two decades by swapping from contribution rates set in statute to an "actuarially determined rate," or ADEC for short. ADEC is a calculation performed during the pension valuation process that shows what plan contribution rates need to be to pay for both benefits and debt service costs. The pension benefits promised to members of NDPERS are ultimately the responsibility of the state, local governments, and taxpayers. Continuing to fall short of fully funding these pension promises unfairly passes on the cost of today's public services to future generations. Adopting an ADEC funding policy is a crucial first step in getting North Dakota on the path to living up to its pension obligations.

Second, this bill closes the current structurally underfunded defined benefit plan to all future new hires and instead offers them a defined contribution retirement plan that our analysis finds meets the high standards of best practices in retirement system design. The proposed reform would avoid the accrual of new unfunded liabilities related to future hires and would, in most cases, offer a more generous benefit than the current NDPERS pension.

Our analysis, along with research from the Teachers Insurance and Annuity Association (TIAA), a Fortune 100 financial services organization, presented to the interim committee, showed that for almost any age an employee begins work, the proposed defined contribution plan's benefits would be more generous than the current NDPERS defined benefit plan's benefits. This is due to the extremely low multiplier of 1.75% that the NDPERS defined benefit uses for calculating benefits and the high rate of turnover in the plan. I'm unaware of any other full defined benefit pension plan with that low of a benefit multiplier.

While the cost of offering the current defined benefit should be low, it is saddled by years of underpaying contributions and the high interest rate on the pension system's accruing debt. Those are the two main factors that have moved NDPERS from being overfunded in 2000 to being $1.8 billion in debt.

To help you visualize the thought process behind this bill, think of NDPERS' unfunded liabilities as an oil spill. The two most urgent actions are: (1) to cap the spill and (2) to clean up the oil that's spilled already. The transition to the defined contribution plan for future hires caps the spill because no new hire would ever have the risk of an unfunded liability attached to them in the future. The second course of action is to clean up the oil already spilled, which is what the shift to proper actuarial funding does. Over the next 20 years, the state and, on a smaller scale, its local governments would be able to pay off the pension system's $1.8 billion in debt by making full actuarial contributions to the NDPERS defined benefit plan.

To assist that paydown, the state has also put other cash infusions into this bill, beginning with $250 million in year one and another $70 million per biennium until the plan reaches full funding. Our modeling forecasts show that these added funds, coupled with the swap to a proper actuarial funding method, would save North Dakota $1.1 billion dollars over the next 20 years relative to the status quo and finally put NDPERS back on proper financial footing.

Lastly, I'd like to make it clear to this committee that if you hear discussions about the the costs associated with this bill, those costs are not the inevitable consequence of shifting to a defined contribution plan for future hires. Instead, the costs reflect the state needing to make an overdue commitment to fully pay for the retirement benefits it has already promised generations of public workers and retirees of North Dakota, who understandably expect to have the pensions promised to them adequately funded.

Swapping to a different retirement plan design has a negligible impact on the overall costs of any pension reform bill. No new workers are needed to "fund" previously granted benefits; pensions do not operate as Ponzi schemes and should not be treated as such. The cleanup of years of underfunding is where the costs of this bill—and most pension reform bills across the country—come from.

Thank you very much for your time, and I welcome any questions.

Testimony: Opposition to House Bill 1039 and House Bill 1040
Before the House Government and Veterans Affairs Committee
January 13, 2023

Good morning, Chairman Schauer and members of the House Government and Veterans Affairs Committee, my name is Gary Feist, I have been a state employee for 31 years as an auditor in the Office of State Tax Commissioners Office. I'm here today to oppose HB 1039 and 1040 which would close the North Dakota Public Employees defined benefit pension plan to new hires. Many state agencies including the tax commissioner's office are struggling to recruit and retain staff. Closing the defined benefit plan will only make it more difficult to recruit staff and will increase agency's expenses for the continual posting of jobs and training of new hires.

The defined benefit pension plan is a benefit that is very important in recruiting and retaining quality employees. I previously severed on the State Employee Compensation Commission where legislators and employees studied and discussed the compensation of state employees and the need to be competitive in the job market. Studies completed by the state have shown that state employee wages lag the market and the benefits, including the defined benefit pension plan, allow the state to close some of the total compensation gap with other large employers in the state and surrounding states. Closing the defined benefit plan will make it more difficult to retain long term employees while also making it difficult to recruit new employees.

In a recent North Dakota Human Resources Management Services' Total Reward Survey employees were asked about compensation and benefits. On the issues of pension there were the following questions: “I prefer to have a defined benefit pension plan rather than a defined contribution plan” for which 42% of state employees said they strongly agreed while in answering, “I prefer to have a defined contribution plan rather than a defined contribution plan” only 3% said they strongly agree. State employees of all ages value the defined benefit plan. The defined benefit plan will provide me and other state employees with a secure, modest retirement without a cost-of-living adjustment.

The defined benefit plan has been an important benefit to me and has played a role in my decision to remain a state employee over the last 31 years when I have been recruited by other employers. To be competitive in the labor market, North Dakota needs to have multiple tools available to enable it to recruit and retain staff and one of those is the defined benefit retirement plan.

I hope North Dakota will not make the same mistake other states have made in closing their defined benefit retirement plans. West Virginia closed its DB plan only to close its DC plan and reopen the DB plan because it was less expensive for the state to administer than the DC plan. In a 2019 new and updated case study completed by the National Institute on Retirement Security (NIRS) on the states of Alaska, Michigan, West Virginia, and Kentucky which switched their new employees to a defined contribution plan reported the states’ overall costs increased, did not address existing pension underfunding, and led to a loss of retirement security for employees. The NIRS study also looked at demographic changes, benefit costs, actuarially required contributions, plan funding levels, and retirement security and found the switch to a

DC plan intensified pension funding problems and increased costs to the states and its taxpayers.

Let us learn from other states, I urge the committee to give HB 1039 and 1040 a do not pass recommendation. North Dakota public employees deserve a retirement plan that will provide a secure retirement for their quality service provided to the citizens of North Dakota. Thank you for your consideration.

Gary Feist

Zeny Agullana
Senior Director, Government Relations

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January 13, 2023

The Honorable Austen Schauer, Chairman
House Government and Veterans Affairs Committee
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505
Submitted Electronically

Re: North Dakota House Government and Veterans Affairs Hearing on House Bill No. 1040

Dear Chairman Schauer:

Teachers Insurance and Annuity Association of America ("TIAA") appreciates the opportunity to provide written testimony regarding House Bill No. 1040 ("Retirement Bill"), a bill that relates to the state's retirement policies and programs. We want to clarify TIAA's role in this important policy deliberation. As a matter of corporate policy, we do not take positions, for or against, any pending legislation that affects defined benefit (DB) plans. These policy decisions are best left to the elected officials in close consultation with the impacted retirement system and various employee groups.

TIAA's specific role in this legislative effort is to provide our perspective on best practices in the design of the defined contribution (DC) plans. Leader Mike Lefor asked us to share our expertise and insights based on our successful partnership with the North Dakota University System (NDUS). Our experience since our founding over 100 years ago, and our collaboration with the NDUS for nearly 60 years, informs our recommendations to the State. Our recommendations are intended to assist the State by providing a best-in-class DC program designed to improve retirement security and provide employees a "pension-like" benefit. The plan design that could provide this type of benefit includes: (1) ensuring plan participation; (2) providing adequate savings; (3) offering diverse investment options, including investments that can provide guaranteed lifetime income; and (4) ensuring that employees have access tools and advice to help them remain engaged through all of life's events.

<u>About TIAA</u>

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over our century-long history, TIAA's mission has always been to aid and strengthen the institutions, retirement plan participants, and retail customers we serve and to provide financial products that meet their needs. TIAA is a leading provider of secure retirements and outcome-focused investment solutions to millions of people and thousands of institutions. It is the #1 not-for-profit retirement market provider[1], paid more than $545B in guaranteed retirement income payments to millions of educators, healthcare professionals, and others in service through the governmental, cultural, and research communities and $6.4 billion in lifetime income to retired clients in 2021 and has $1.2 trillion in assets under management[2].

I. General Background on the Retirement Industry

Before we discuss defined contribution plan design best practices, we must understand the challenges we as an industry are trying to solve when it comes to individuals and ensuring they retire with dignity. This challenge becomes even more critical when Americans face a projected $4 trillion retirement income gap[3]. More than 40% of households are forecast to exhaust their savings during retirement[4]. Finally, if we fail to address this retirement income gap, not only will this shortfall severely impact the quality of life in retirement, but it could also have a devastating impact on our economy.

Until 30 years ago, most employers offered DB Plans with a relatively singular design and a guaranteed outcome. As private employers switched to DC only models, retirement outcomes became more dependent on the quality of plan design. A well-designed plan, makes participation easy, provides an adequate level of savings, offers investment choices based on an individual desired outcome, and provides the tools to make informed choices throughout a career.

II. Ensuring Employees' Plan Participation Into Appropriate Plan Investments

Research has demonstrated that auto enrolling employees into a default plan, significantly increases participation and therefore improves retirement outcomes. According to the Bureau of Labor Statistics, allowing employers to auto-enroll employees into a default investment such as a target date fund, increased participation rates from 42% to 77%[5]. We applaud the inclusion of automatic enrollment in HB 1040.

III. Driving Adequate Savings

While participation is vital, so are contribution rates. TIAA and other experts believe that having a total savings rate of 12% to 15% of an employee's compensation should be the target. This total savings rate can be achieved through a combination of both employee and employer contributions. To that point, TIAA encourages employers to establish a strong employer contribution floor combined with features that either encourage participant savings via match, mandatory employee contribution or auto-escalation. Auto-escalation is a plan design feature that, after the employee is enrolled, the default contribution rate automatically increases based on a specific time. For example, the employer may automatically increase the employee's contribution rate by 1% at the beginning of each year or the employee's employment anniversary date. The increase could continue until the total contribution rate caps at 15%.

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[1] As of July 21, 2022. Based on data in PLANSPONSOR's 403(b) 2022 DC Recordkeeping Survey, combined 457 and 403(b) data.
[2] As of September 30, 2022, assets under management across Nuveen Investments affiliates and TIAA investment management teams are $1,179 billion.
[3] VanDerhei, Jack, EBRI Retirement Security Projection Model (RSPM) - Analyzing Policy and Design Proposals, EBRI, No. 451, May 31, 2018
[4] https://www.ebri.org/content/retirement-savings-shortfalls-evidence-from-ebri-s-2019-retirement-security-projection-model
[5] https://www.bls.gov/news.release/ebs2.t01.htm

IV. Offer Diverse Investment Options, Including Guaranteed Lifetime Income

A key part of a best practices plan design is offering diverse investment options, including guaranteed lifetime income within the default plan. Including a "defined benefit-like" component of guaranteed lifetime income as part of the default can protect retirement savings and ensure an income stream throughout the employee's life. Principal and earnings will grow every day — guaranteed — even in the most volatile markets, and at the time of retirement, convert retirement savings into monthly income payments that participants can always rely on to help meet everyday living expenses.

There are some misconceptions about in-plan, guaranteed lifetime income solutions, including expenses or fees, and that guaranteed lifetime income solutions are a "one size" approach. On the contrary, in-plan guaranteed lifetime income solutions can be relatively cost-effective, and include features that can protect not only the employee, but their partner or spouse, and even other loved ones. It is also clear that people want guaranteed lifetime income. According to a recent study by AARP, 78% of retirement plan participants expressed interest in enrolling some or all of their retirement savings into a guaranteed lifetime income product at the time of retirement[6]. We believe the requirement for in plan lifetime income solutions included in HB 1040 is essential for providing strong retirement outcomes for North Dakota public employees.

V. Drive employee engagement

Providing ongoing retirement planning is essential for improving retirement outcomes. As employee's lives change, access to financial advice and tools helps them adjust their savings behavior to account for significant life events and their changing goals. The 2022 Planning and Progress Study revealed that 80% of people who worked with an advisor increased their savings during the pandemic compared with 49% of savers who did not seek advice[7]. HB 1040 requires that these services are made available and this will significantly improve the outcomes for North Dakota public employees.

Conclusion

TIAA appreciates the opportunity to provide written testimony related to defined contribution plan design best practices. We look forward to providing assistance to enhance the current defined contribution program to provide the best outcomes, including providing a pension-like benefit, for the defined contribution plan's participants.

Sincerely,

Zeny Marie Agullana

Zeny Agullana
Senior Director, TIAA Government Relations

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[6] AARP, "Almost Half of Americans Fear Running Out of Money in Retirement," May 2019
[7] Northwestern Mutual, The 2022 Planning and Progress Study

WILLISTON PROFESSIONAL FIREFIGHTER ASSOCIATION
I.A.F.F. Local 3743

January 10th, 2023

Chairman Austen Schauer
House Government and Veterans Affairs
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Chairman Schauer & Members of the House Government & Veterans Affairs Committee:

On behalf of the membership of the Williston Professional Firefighter's Association, I ask that you and the members of your committee oppose House Bill 1040 and House Bill 1039. This bill terminates future enrollees to the "main plan" portion of the ND PERS retirement system and transition new employees to a defined contribution plan. Although many of the members are an active part of the public safety plan of ND PERS, there are many administrative staff members of fire departments who do not qualify for this plan. Fire departments do not operate solely on their own. To function adequately they often rely on support from other governmental departments and agencies to whom would be directly effected by this change.

The current system in place provides a benefit to public employees that is no longer seen in the private sector. This benefit is one of few benefits that sets public serve apart and allows for recruitment and retention of good employees. The nature of government work demands conservative fiscal oversight to do the most good for the citizens we serve at the lowest cost. This often results in public sector jobs have less lucrative wages and benefits as compared to the private sector.

Please oppose these two bills and explore an alternative means to preserving the ND PERS system.

Fraternally,

Chris Mahoney
President
I.A.F.F. Local 3743

North Dakota House of Representatives
Government and Veterans Affairs Committee
Chairman Austin Schauer

By: Tom Ross
Mayor, City of Minot
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701-857-4750

Lisa Jundt
Human Resources Director, City of Minot
lisa.jundt@minotnd.gov
701-857-4753

HB 1039 & HB 1040

Chairman Schauer and members of the House Government and Veterans Affairs Committee, my name is Tom Ross and I am the Mayor of the City of Minot. Thank you for allowing me to provide testimony today on behalf of my city. Lisa Jundt, our City's Human Resources Director, was instrumental in outlining our concerns regarding both HB 1039 and HB 1040, and I want to recognize her work here, too.

In 2014, the Minot City Council voted to close its existing defined benefit pension plan in favor of offering a defined contribution plan to future employees. This decision was made not only for financial reasons, but with the premise of offering a more conventional retirement plan similar to that of the private sector. By doing this, the City felt it would be able to improve the attraction and retention of potential employees. That was not the case.

In the time period from 2014-2018, with employees hired under a defined contribution retirement plan, the City of Minot continued to see significant turnover. Turnover is very challenging and costly, especially in public safety occupations, as those positions have significant training requirements and employees are sought-after in the private sector due to this completed training (CDL, safety positions)

At the beginning of 2018, the Human Resources Department conducted a longevity assessment of the police and fire departments as well as the Engineering Department. That assessment revealed very disturbing results regarding longevity and experience levels in each of those departments. The longevity /experience assessment indicated the following:

- Police Department - 35 of 81 sworn officers, or 43.2% of the overall police force, had 5 years or less experience.
- Fire Department – 34 of 60 fire control personnel, or 56.7% of the control force, had 5 years or less experience.

This information was presented to the Minot City Council during a workshop addressing workforce issues in April of 2018. At that time, additional information was also provided in the form of employee comments compiled from exit interviews, employee evaluations and an employee satisfaction survey. A majority of the employee comments cited the lack of a comparable defined benefit plan as the main reason for unsuccessful recruitment efforts and continued retention issues. Based on the presented information, the Minot City Council asked that research be done to restructure many benefits including the retirement benefit, which they agreed should be structured like a more conventional government pension. The City of Minot had the option as a political subdivision to participate in the North Dakota Public Employees Retirement System (NDPERS) defined benefit (DB) plan. As such, the City Council decided it was the most logical and prudent retirement plan to move to. The City began participating in the NDPERS-DB plan on January 1, 2019.

Since the implementation of the NDPERS-DB plan in 2019, the City has reduced the rate of employee turnover. The turnover rate in the City went from 12.56% in 2018 to 7.6%, 8.27% and 9.95% in 2019, 2020, and 2021 respectively. This resulted in a decrease in the number of public safety employees with less than 5 years of experience, which is currently at 37% for the Police Department and 47% for the Fire Department. This improved employee retention saves taxpayer dollars and provides a more experienced, well-trained, and well-rounded service to the community. The defined benefit pension was an important tool to achieve this result.

Government entities are not as nimble to respond to outside economic forces and are unable to adjust rates of pay and benefits on the fly to respond to demands in the workforce. What government entities are able to provide is a higher level of stability both in job security and pay and benefits. A defined benefit pension plan is an integral part of that equation. Removing this portion of the equation will result in the necessity to improve other pay/benefits to remain competitive in the marketplace. This will come at a cost to taxpayers that is very difficult to quantify at this time.

Minot and other North Dakota political subdivisions provide important and essential services to their citizens, especially with regard to public safety. We believe HB 1039 will further hinder employment efforts for the City of Minot and other political subdivisions equally by eroding comparable and expected public sector retirement benefits. For these reasons, we respectfully ask for a Do Not Pass recommendation.

Thank you for your time and consideration in this matter.

January 13, 2023

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

Thank you for holding this important hearing and for the opportunity to provide testimony today.

My name is Andrew Nyhus with Americans for Prosperity North Dakota. Americans for Prosperity is the State's largest grassroots organization focused on long-term solutions to country's biggest problems. As you weigh how to best address the issues within the NDPERS system, I urge you to take the following tenants of reform into consideration.

Across the nation, State and municipal pensions are significantly underfunded and pose a substantial liability to taxpayers. These unfunded liabilities arise from unreasonably inflated anticipated returns on investment, underfunding from employees and employers, and unaffordable promises made to employees.

At current, there is a $1.8 billion unfunded liability in the North Dakota Public Employees Retirement System. This is a common problem for states across this country, but North Dakota stands out among them for the severity of our shortfall. The solution presented in HB 1040 will gradually resolve the issue and prevent the creation of new unfunded liabilities. It is a prudent resolution similar to successful reforms implemented in other states.

Transitioning to a defined contribution plan provides several benefits. First and foremost, predictability. Presently, it is difficult to model the solvency of the fund with any accuracy. HB 1040 will give taxpayers a predictable expenditure that does not create new debts. Meanwhile, employees will gain confidence in their benefits for the long haul.

Every year of inaction adds more unfunded liabilities to the defined benefit plan. This unfairly transfers debt, and the cost to service it, to future taxpayers. With their hands tied, future generations will not be free to determine how to best direct the taxes they pay. Instead, this generation will have obligated the next to pay a debt they did not incur—and that with interest.

Left unchanged, the growing unfunded liability will need to be paid annually out of the State budget. Those appropriations could be three to four times what it costs today. For taxpayers, that is like adding a new State agency that provides no services. HB 1040 fixes this across a 20-year outlay.

To address the challenges certain to come from the *status quo*, now is the time to act and pass HB 1040. This legislation is a right-sized and responsible solution to an issue that will only grow with time and limit our options in the future. There is a window to fix it now and set North Dakota on a sustainable fiscal trajectory for generations to come. We respectfully ask for your support of HB 1040.

Thank you again for holding this hearing on a serious and timely subject. I am grateful for your consideration and the opportunity to testify today.

Andrew Nyhus

Americans for Prosperity North Dakota

Professional Fire Fighters of North Dakota

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

1/13/2023

House Government and Veterans Affairs Committee

Mr. Chairman and members of the House Government and Veterans Affairs Committee,

My name is Darren Schimke, President of the Professional Fire Fighters of North Dakota. I rise before you on behalf of the PFFND in opposition of HB 1040.

Management consulting firm McKinsey reports that organizations that appear on "best places to work" lists often make the cut because their business strategy is premised on a long-term relationship with their employees. McKinsey credits companies for both the large and small signals sent to employees that an organization cares about its people.

Valued by employers as a workforce management tool to recruit and retain talent, offering defined benefit (DB) pension benefits is one way that employers send a loud signal to employees that they are committed to a long-term relationship. This provides a meaningful incentive for employees to stay in their job. Employees value pensions as a path of economic security in retirement. Decreasing plan benefits negatively affect that security.

It's important to remember that one of the main reasons many entities throughout the State attract and retain its public employees is largely because these workers understand the long-term value of their pensions.

There are experiences logged throughout the internet that offer important cautionary tales for governments to consider when changes to pension benefits are being studied. Drastic changes can actually encourage employees to leave their employment/town rather than stay long term.

As a 30-year employee of the City of Grand Forks Fire Department, I have witnessed firsthand the negative effects of decreases made to a retirement plan. In 1994, the City proposed decreases to the benefit multiplier and extending the average final years' salary from 5 to 10, along with an increase in employee contribution. After a lengthy negotiation period, compromises were made within all of the above-mentioned areas and implemented. In January 1996, the City choose to close the DB plan, which was in existence since 1970, to all new hires and opened a DC (Defined Contribution) retirement plan for new hires. Approximately 5 years after the DC implementation and as the Grand Forks firefighter's Local 242 union president, I noticed within my own department, and hearing from other departments, that we were all experiencing major turnover. The majority of these departures were not due to retirements, as years prior, but for seeking employment elsewhere. At the time, the Grand Forks Police Dept FOP President told me that the number one reason for leaving employment stated during exit interviews was "better retirement benefits". The same reasons were being stated during exit interviews at the Fire Department, according to our then Fire Chief, Peter O'Neill. As the President of the City Employee Representative Group, I then inquired with the group's members about the morale of their departments. It was staggering to hear how low it was and the actions that were being taken to demonstrate low morale by employees. This was also being demonstrated within the fire department to a certain degree. With that concern and reading about the ND PERS Retirement plan in the Grand Forks Herald, I inquired with the Human Resource Department and the Finance Department about joining the ND PERS Retirement Plan. A few of my many selling points were plan longevity, plan stability, and recruitment/retention success stories. Long story short, the City of Grand Forks joined the ND PERS plan and the DC plan participants are now in a DB plan along with all new hires. Within a few short years, I can honestly say the level of morale rose drastically. We understand that things change and adjustments need to be made from time to time. In fact, we have supported past plan adjustment increase bills that originated from right here. But things like completely cutting out a benefit and offering a drastically decreased benefit all at once has the appearance of a knee jerk reaction that when something less (ex. contribution adjustment) would be more palatable and have positive results.

I currently serve on the City of Grand Forks Pension and Insurance Committee and one of the issues we deal with is the closed DB plan that was started in 1970. When this plan closed in 1996, new plan participants ceased. As the plan's retiree participants grow, the increased cost to the City to date is far greater than any projection that was presented to us in 1996.

With the ever-growing competition within the job market, to be a best place to work, employers must signal to employees that they are valued over the long-term. Cuts within pension benefits sends the exact opposite message.

Thank you for the opportunity to stand in front of you today and now I will take any questions that you may have.

Darren Schimke

HB 1039 & 1040– Testimony by Dustin Gawrylow (#266) North Dakota Watchdog Network

The North Dakota Watchdog Network has long supported genuine permanent reforms to North Dakota's pension system – including the conversion to Defined Contributions for new hires.

The perpetual and ever-worsening unfunded liabilities situation means that no matter what, taxpayers will be asked to bailout the fund to fulfill the promises previously made. This will likely cost multiple billions of dollars over the actuarial life of the fund going forward ~80+ years into the future. But by closing the current fund at least there will be an end point.

We also support as part of the reform a change to the investment expectations. The traditional 8% return target is not consistently realistic with needs to the plan, as proven by the fact that two decades of volatility has drastically diminished the plan's ability to pay out without constant cash infusions and increases to both employer and employee contribution rates.

Because there are multiple bills in the works, we will wait until a final "vehicle" is developed before declaring support for any plan.

One thing we will not support is a bailout without reform and without strings attached.

The status quo is not working.

The legislature had a chance a decade ago to fix this, and failed to, and now it it $2 billion in the hole instead of only $1 billion in the hole.

Please remedy this so that it does not drag the state down 30-80 years from now.

Grand Forks Herald
GrandForksHerald.com

OPINION

Dustin Gawrylow, Mandan, N.D., column: Pension thundercloud looms on N.D.'s horizon

By Dustin Gawrylow MANDAN, N.D. -- During the past few months, as has been a tradition for the past six years or so, North Dakota officials have been very proud to brag about all the revenue coming into the state's treasury because of the oil boo...

Opinion by news@grandforksherald.com
December 13, 2012 05:00 PM

By Dustin Gawrylow

MANDAN, N.D. -- During the past few months, as has been a tradition for the past six years or so, North Dakota officials have been very proud to brag about all the revenue coming into the state's treasury because of the oil boom.

Last week, Gov. Jack Dalrymple released his budget proposal for the next two years. While there certainly is plenty of money (and even more ways to spend that money), Herald readers also must remember the prospect of high costs in future years and the way those costs could derail the state budget's long term health.

While most people understand the threat that the federal government poses to North Dakota's economy in the matter of taxes and regulation, there are major areas in North Dakota's internal policies that also could pose major problems down the line -- and so far, the Legislature and governor have ignored these issues.

During the regular session in 2011, a strong effort was led by state Rep. Bette Grande, R-Fargo, to reform and modernize North Dakota's public pension system.

With a 69-25 Republican majority, the effort to move both the teachers' retirement system and the public employees' retirement system away from a defined benefit program toward a 401(k)-style defined contribution program failed to pass the North Dakota House.

In the past two years, North Dakota's public pension funds have continued the downward slide that began in 2008. They now represent a $2 billion unfunded liability over the next 30-odd years.

The Public Employee Pension Fund now is funded at a 65 percent level and is nearly $874 million short of the level it needs to cover projected retiree benefits over that same stretch of 30-plus years.

The Teacher's Retirement Fund is funded at a rate of 60.9 percent and is more than $1 billion short of being able to meet its projected obligations over that time.

These are alarming figures, especially in light of how North Dakota's leaders spend most of their time bragging about all the surplus dollars the state budget is seeing come in because of the oil boom. But this crisis is not a surprise to anyone.

Even more staggering is that from 2010 to 2012, these pension funds have seen their unfunded liabilities increase from $1.3 billion to $2 billion.

These pension funds are in trouble for two reasons:

** They are based on the antiquated defined benefit approach to retirement. This means that the state and local governments have made promises to employees to provide fixed benefits, no matter what the market does.

The state is obligated to make these benefit payments regardless of how much revenue is earmarked for that purpose or what the market returns are.

** The investment philosophy of these pension funds is to chase an 8 percent annual return. Even high-flying (liberal) investment geniuses such as Warren Buffet say that goal is out of line, and a 6 percent return is more realistic.

The time to fix these problems is now, while North Dakota has the money to rebalance its tax code and get future liabilities under control.

Continuing to ignore these problems and to hope they go away is the Washington Way, not The North Dakota Way.

Gawrylow is managing director of the North Dakota Watchdog Network.

Grand Forks Herald
GrandForksHerald.com

OPINION

OUR OPINION: Keep close eye on public-sector pensions

North Dakota's overall finances are in great shape, and Minnesota's are getting better. But in both states, there's a set of long-term obligations that have wreaked havoc in other capitals and could do the same in Bismarck and St. Paul.

Opinion by *Thomas Dennis*
June 21, 2012 05:00 PM

North Dakota's overall finances are in great shape, and Minnesota's are getting better. But in both states, there's a set of long-term obligations that have wreaked havoc in other capitals and could do the same in Bismarck and St. Paul.

The obligations are the pension and health-care benefits the states will owe to their government-worker retirees.

If a recent report by the Pew Center on the States is any indication, North Dakota and Minnesota may have work to do.

Here's an important caveat: They also may not. The Pew study takes a snapshot of the states' obligations as of fiscal year 2010, the last year for which complete information on all 50 states is available.

But the North Dakota Legislature in 2011 beefed up both retirees and governments' contributions to the fund, putting it on a stronger footing. Likewise, the Minnesota Legislature made changes in 2009 and 2010, including lowering the cost-of-living increases promised to retirees. Retirees challenged that provision in court, but the court upheld the policy's constitutionality last year.

So, the bottom line is that both states have improved their condition since 2010, the time of the Pew report. But plenty of watchdogs think the reforms didn't go far enough, so the Pew numbers are a good baseline from which to track the changes over time.

In Minnesota, that baseline is pretty far back from where it should be, Pew reports.

"Minnesota consistently failed to pay its full annual pension contribution from 2005 to 2010," according to the study.

"The system was 80 percent funded in fiscal year 2010 and faced an $11 billion funding gap." That's at the low end of what a state should have set aside, Pew reports.

"The state also had a $1 billion bill for retiree health care costs, none of which was funded, well below the 8 percent national average in 2010."

The bottom line as of 2010: "Minnesota?s retirement plans had a liability of $58.8 billion, and the state has fallen $13 billion short in setting aside money to pay for it." The state needs to improve how it's paying for both obligations -- especially retiree health care, which is reason for "serious concern," Pew reports.

North Dakota, for its part, "failed to consistently pay its full annual pension contribution from 2005 to 2010," according to Pew.

"The system was 72 percent funded in fiscal year 2010 and faced a $1 billion funding gap."

Again, remember that the 2011 changes should boost that 72 percent figure over time. And a good thing, too, given that Pew declares the 72 percent figure cause for North Dakotans' "serious concern."

At the same time, "the state also had a $113 million bill for retiree health care costs, 30 percent of which was funded, well above the 8 percent national average in 2010." That earns North Dakota a rank of "top performer" on retiree health care funding, in part because the state's obligations are comparatively modest.

Pensions remain one of America's most urgent and contentious issues. Minnesota and North Dakota residents and lawmakers should take special care to make sure their recent reforms take root.

-- Tom Dennis for the Herald

Opinion by Thomas Dennis

#13176

NORTH DAKOTA PUBLIC EMPLOYEE'S RETIREMENT SYSTEM (NDPERS)

TRANSITION COSTS AND BEST PRACTICES IN PENSION DESIGN

Prepared by:

Pension Integrity Project at Reason Foundation

May 23, 2022

reason FOUNDATION

Policy Objectives

- **Keeping Promises:** Ensure the ability to pay 100% of the benefits earned and accrued by active workers and retirees
- **Retirement Security:** Provide retirement security for all current and future employees
- **Predictability:** Stabilize contribution rates for the long-term
- **Risk Reduction:** Reduce pension system exposure to financial risk and market volatility
- **Affordability:** Reduce long-term costs for employers/taxpayers and employees
- **Attractive Benefits:** Ensure the ability to recruit 21st Century employees
- **Good Governance:** Adopt best practices for board organization, investment management, and financial reporting

REASON FOUNDATION NDPERS MODELING TOOL

NDPERS Modeling

- The Pension Integrity Project is in the final stages of developing an interactive NDPERS actuarial modeling tool to allow policymakers and stakeholders to test and customize the plan designs you choose.

- The interactive actuarial modeling tool will also allow you to conduct stress testing around the current or alternative NDPERS retirement plan designs.

- We will deliver this tool to the committee subsequent to this meeting, via email.

EXAMINING "TRANSITION COSTS"

Pension Reform and "Transition Costs"

- To mitigate the risks that have led to major underfunding in traditional defined benefit pension plans, many government employers have shifted new employees over to new and lower-risk retirement plan designs:
  - Risk-managed defined benefit (DB) pensions,
  - Defined contribution (DC) retirement plan,
  - Hybrid DB+DC plans, or
  - Cash balance plans.

- A common but misguided objection to such policy reforms—particularly DC plans—is the idea of a so-called "transition cost".

- While taking different forms, this generally involves a mistaken belief that setting up new employees with a new retirement plan will require substantial money upfront to pay down unfunded liabilities in the legacy pension plan.

Transition Costs: Myths vs. Reality

- The supposed sources of transition costs are based not in law or practice, but rather actuarial preference:

1. **Amortization Policy**: When considering prospective plan design changes, actuaries may recommend that it would be prudent to accelerate the paydown of unfunded pension liabilities to mitigate risk, and potentially also level out annual contributions into equal annual installments instead of a percent-of-payroll based figure, like today.

   - There is no legal requirement at the federal or state level, nor any government accounting standard, mandating that pension contribution rates increase when adopting pension reform in order to accelerate unfunded liability payoff.

   - However, paying off pension debt faster is a good policy ***no matter what***. We believe that it is prudent to pay down existing unfunded liabilities as fast and level as possible—***regardless of whether or not you adopt a new plan design***.

   - Using an accelerated amortization method is likely to result in increased contribution rates towards the unfunded liability for the first few years, but such a change would also mean ***paying much less in the long run*** due to avoided interest costs.

   - Long-term costs are always the proper anchor for determining prudent pension policy, new plan design or not.

Transition Cost: Myths vs. Reality (cont'd)

2. **Discount Rate/Investment Return Assumption**: Another policy consulting actuaries often raise in pension reform discussion is a preference to change the discount rate/assumed rate of return when closing a defined benefit pension plan in order to make it less vulnerable to underperforming investments in the future.

- In turn actuaries claim this would require increasing the contributions into the plan today to account for less expected investment returns decades in the future when assets are winding down.
- Even if you closed the pension tomorrow, you would be paying out liabilities for at least 50-80 more years, and thus immediate changes to investment policy or portfolio are not necessary and can be adjusted over time.
- Like amortization, North Dakota should consider adopting a lower discount rate for NDPERS whether new employees are shifted to a new retirement plan or not.
- US public pension systems in states like California, New York State, Michigan and others are now adopting discount rates well below 7%, and so should NDPERS.
- While lowering the discount rate might be fiscally prudent, there is no legal or financial requirement to do so if changing to a new retirement design.

Bottom Line on Transition Costs

How to fund existing NDPERS unfunded liabilities is a distinct policy matter on its own terms that should not constrain responsible, prospective pension reform:

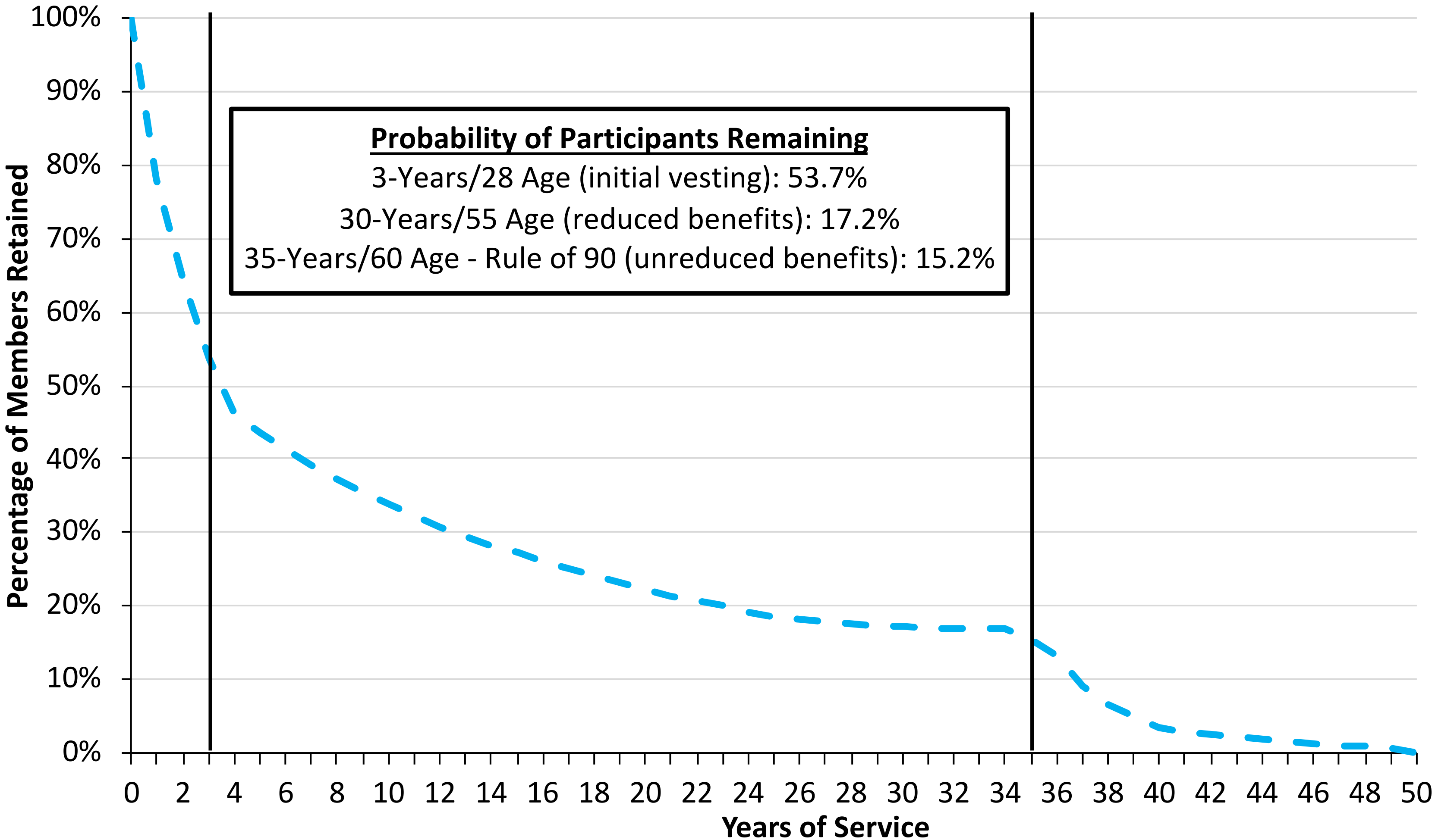
- Other states — such as Oklahoma, Arizona, and Utah — have faced the same concerns and found ways to design around any contribution rate increase that was unaffordable in the given climate.
- The question of transition costs is entirely a political, not an accounting or actuarial, question. It is up to legislators and state departments to determine how they want to pay down unfunded liabilities.
- Legacy unfunded pension liabilities cost what they cost, reform or not. Reform does not make your current pensions more expensive since those are formula-driven benefits.
- Public pensions are not Ponzi schemes, and by design, pension contributions under a prudent funding policy are not affected by whether or not there are new entrants every year.
- **The key is to ensure that after reform, legacy unfunded liabilities are paid down at the same or faster rate than they are today**.

RECAP OF APRIL 11TH AND 25TH MEETINGS

“Better Bang for the Buck 3.0”

- **NIRS study from January 2022**
  - Third round of this study, other two released in 2008 and 2014.
  - Highlighted by Milliman in previous presentations to the board.
  - Presents an incomplete perspective on the relative efficiency of a DB vs DC.
- **Key issues**
  - Is a DB plan more “efficient” with taxpayer dollars?
  - Does a DB plan manage risk better?
  - Do DC plans have more fees?
  - Are pension funds better investors than individuals?
  - Is a DC plan 50% more expensive than a DB for the same benefit?
  - Risk pooling vs Annuities
  - Portability

Probability of Members Remaining in NDPERS



Source: Pension Integrity Project analysis of NDPERS reports and CAFRs.
Illustration is based on *Main Plan* assumptions and a hypothetical analysis of an average member hired at the age of 25

Do NDPERS Retirement Plans Work for All Employees?

- **46%** of new NDPERS members leave before 3 years.
  - Benefited employees must work 3 years before their benefits become vested.
  - Members who leave the plan before then must forfeit contributions their employer made on their behalf.
  - Another 20% of new employees who are still working after 3 years will leave before 10 years of service.

- **17%** of all new paid members hired next year will still be working after 30 years (with age 55), long enough to qualify for a reduced benefits.
  - North Dakota ensures that all state employees have access to Social Security benefits.

Source: Pension Integrity Project analysis of NDPERS withdrawal and retirement rate assumptions. Estimated percentages are based on the expectations used by the plan actuaries; if actual experience is differing substantially from the assumptions then these forecasts would need to be adjusted accordingly.

Plan Design Discussions

- **DC**
  - Milliman said they would present on Michigan and West Virginia for background on DB to DC swap.
    - Important that Milliman also looks at Oklahoma, which has a fully funded pension after their transition.
    - While Michigan has had a long history of DC design improvement in their Public Employees plan, we built the Michigan Teacher choice-DC plan which is an exemplary model.
    - West Virginia suffered from a poor DC plan design along with a failure of policymakers to properly fund the legacy pension—both were avoidable through better design.
  - Committee asked to look at opening loan and hardship provision in current DC and 457 plans.
    - Just as you can't borrow against a pension, one should not be able to borrow against an account in a DC retirement plan intended to serve as a primary retirement vehicle.
    - "No borrowing against DC account balances" is a best practice in our policy paper: *Best Practices in the Design and Utilization of Public Sector Defined Contribution Plans*.
- **Cash Balance**
  - Milliman stated that a CB has the same sort of contribution volatility as a DB plan, but our actuarial modeling for the Texas' Employees Retirement System swap to a CB last year suggests less volatility.
  - Milliman also stated that the surge in private sector CB plans was a way to "mask a benefit reduction for employees because they can't compare apples to oranges like actuaries can."
    - Benefit levels and generosity are entirely policy decisions of the legislature, and not a function of the plan type.
    - As you saw from the retention charts, having a more portable option like a CB, DC, or hybrid would benefit a larger number of employees.

Plan Design Discussions

- **Variable Plan**
  - Unsure of where this plan design option came from.
  - Somewhat like South Dakota's pension design.
  - Milliman does offer their "Milliman Sustainable Income Plan".
    - This design may be an example, but to our knowledge no statewide public pension system has adopted it.
- **Critique of Milliman Score Card**
  - Milliman offers a scorecard showing how different plan designs match different goals, covering 9 metrics.
  - **All 9 considerations on their list can have a "checkmark" if the plan design is structured properly.**

Questions Around Narrowing Down Options?

- Defined Contribution
- DB+DC Hybrid
- Cash Balance
- Optimized Retirement Choice (DB or DC)

Questions?

Pension Integrity Project at Reason Foundation

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52259273 © Joe Sohm | Dreamstime.com

COMMENTARY

The Future of North Dakota Pension Reform

North Dakota should adopt pension reform that reduces long-term risk for taxpayers and maintains attractive retirement options for state workers

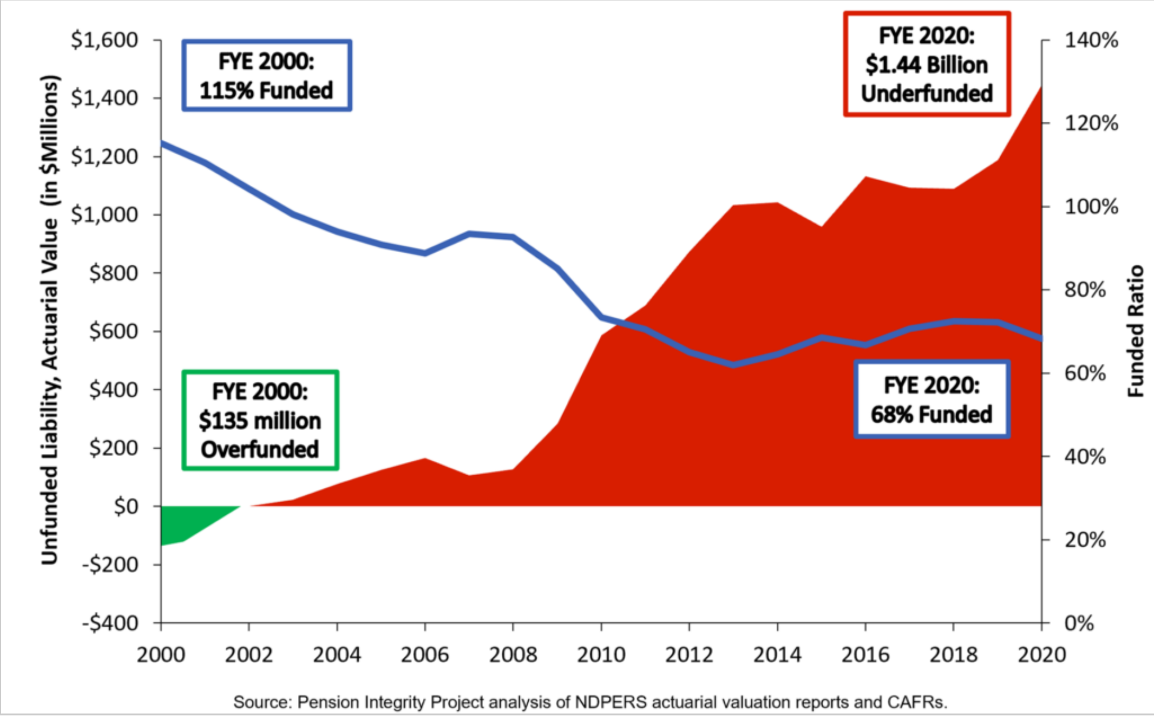
Raheem Williams
Policy Analyst

August 2, 2021

It's time for North Dakota to get serious about runaway pension debt. For decades, North Dakota's elected officials have structurally underfunded the state's largest pension plan for public workers. That almost changed in 2021 when both legislative chambers passed pension reform legislation, but disagreements between House and Senate conferees over the details of how to address pension underfunding caused the reform bill to die in the conference committee process. This has left the issue of growing pension debt unresolved.

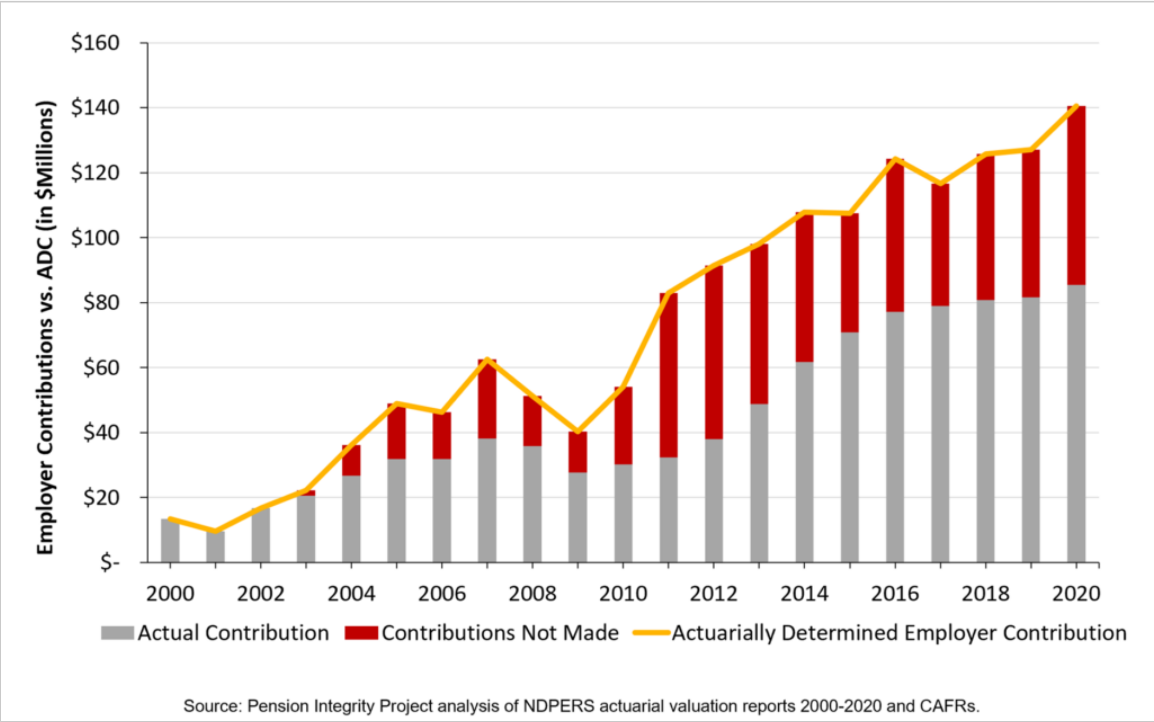
In 2000, the North Dakota Public Employees Retirement System (NDPERS) boasted a 115 percent funded ratio and a $135 million surplus of funds to pay for public employee retirement benefits. Since then, NDPERS has accumulated $1.4 billion in unfunded liabilities. This debt is driving up future costs for taxpayers via debt service and the system has plummeted to only 68 percent funded today (see Figure 1).

Figure 1. A History of NDPERS Solvency (2000-2020)



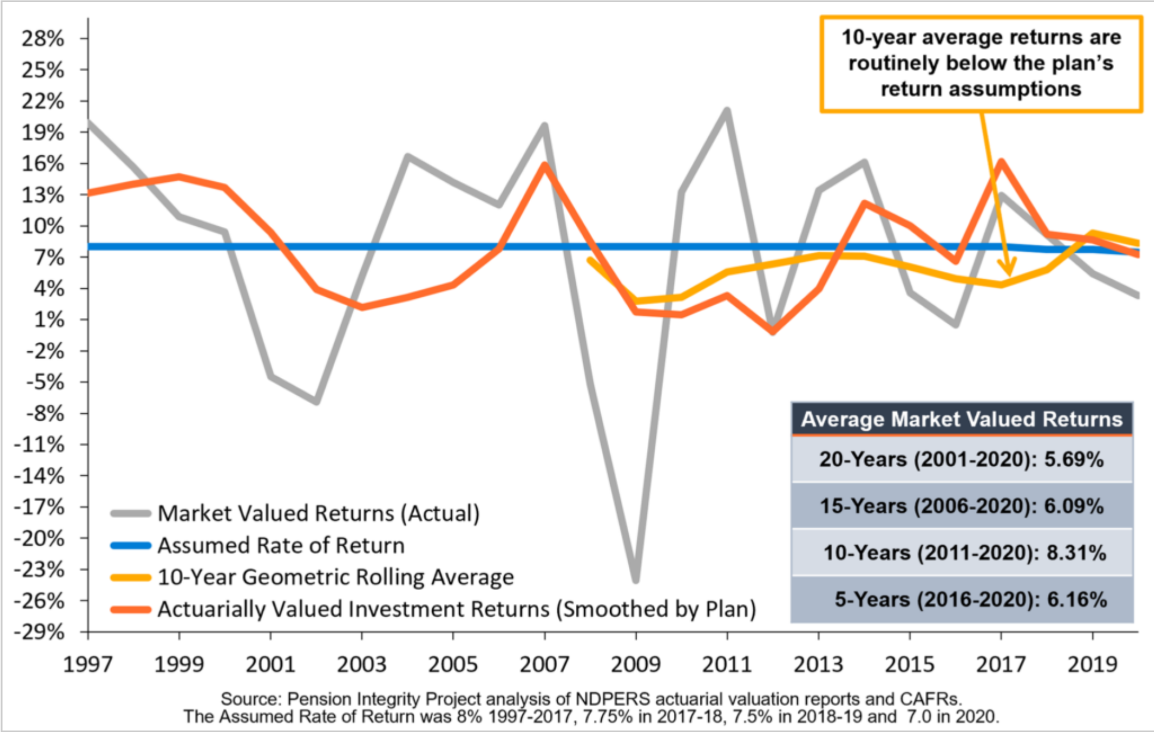
NDPERS's structural underfunding is primarily driven by the legislature's historical use of fixed, statutorily set contribution rates that have consistently been set below the amount actuaries calculate is needed to fully fund all earned retirement benefits. This means that for 15 years the state has consistently failed to pay the actuarially required amount to keep the plan solvent (see Figure 2). For the 2020 fiscal year, the deficit between actuarially required contribution rates and the statutory rates was 5.87 percent of payroll or about $67.6 million in missed contributions.

Figure 2. Actuarially Determined Employer Contribution History, 2000-2020 Actual v. Required Contributions



In addition to inadequate contributions, NDPERS investment returns have failed to meet expectations and this shortfall has contributed to the growth of unfunded liabilities. The investment return assumption for the plan was an unreasonably high 8 percent until 2016 when it was reduced to 7 percent. For every year investment returns fail to meet the return assumption, unfunded liabilities grow. The system has fallen short of even a 7 percent return on average and earned an average investment return of 6.1 percent over the last 15 years, and despite a decade-long bull run in the capital markets, NDPERS never fully recovered from the Great Recession (see Figure 3).

Figure 3. NDPERS Investment Returns History, 1997-2020



During North Dakota's 2021 legislative session, legislators were poised to tackle the state's pension underfunding and considered several pieces of reform legislation, including a bill to transform the retirement plan design. This bill passed both chambers but failed to get resolved in the conference committee.

That failure to reach a bicameral consensus was unfortunate, but with some simple and straightforward tweaks to the reform legislation, legislators can build on the momentum created in 2021 to enter the 2023 legislative session with a coherent and sustainable plan to improve NDPERS's solvency and promote stakeholder equity.

Lawmakers' previous attempts to update the benefit structure for new hires and improve how the state funds the pension system manifested in several different pension bills that attempted to address North Dakota's pension challenges in different ways. Most focused on the current plan's funding policy while one—Senate Bill 2046—made provisions for additional funding for the legacy NDPERS defined benefit plan while directing all new hires into the state's long-established primary defined contribution retirement plan choice.

The Pension Integrity Project at the Reason Foundation provided technical assistance to numerous state lawmakers in North Dakota both in advance of and during the 2021 session, utilizing our in-house actuarial modeling of NDPERS to assess the financial and fiscal impacts of potential reform solutions.

In the preliminary stages of the legislative process, one of the bills, House Bill 1209, was a simple plan to address the chronic underfunding of NDPERS by switching from statutorily established contribution rates to the actuarially recommended contribution rate. As originally introduced, HB 1209 embodied best practices for properly funding NDPERS by stopping structural underpayments that significantly hindered the system's ability to grow assets to meet the promises made to public workers for decades. For years, contributions based on statutory rates were woefully insufficient according to both our independent analysis and NDPERS' own actuaries. The Pension Integrity Project provided testimony regarding these issues during the initial House committee hearing on HB 1209, but the bill was subsequently transformed into a study bill.

House Bills 1342 and 1380 would also have increased contributions in different ways. HB 1342 would have increased employer and employee contributions by 2 percent of payroll each (for an aggregate 4 percent increase), while HB 1380 would have transferred 5 percent of the earnings from the state's sovereign wealth fund to the NDPERS pension fund as one of several dedicated appropriations. These bills would have both improved the funding status of NDPERS but neither were comprehensive reforms that would have prevented future unfunded liabilities from accruing.

Senate Bill 2046 ultimately became the primary legislative vehicle for pension reform proposals. Originally a simple proposal to increase the NDPERS statutory employee and employer rates by 1 percent of payroll, for a combined total of 2 percent, SB 2046 evolved into a more comprehensive reform effort that included:

- Closing the current defined benefit plan to new workers (except those in public safety positions and judges)
- Enrolling all new hires in the currently optional 401(a) Defined Contribution (DC) plan
- $50 million in biennial legacy fund contributions
- A one-time $100 million cash infusion
- The separation of plan assets/debt by municipal and state employment

The Pension Integrity Project's preliminary evaluation of SB 2046 found the measure to be lacking in many crucial objectives of good pension reform.

The reform did not properly amortize debt or sufficiently address the state's problems with annual contributions below the actuarially determined amount. Actuarial modeling showed that over a 30-year period SB 2046 created a serious risk of bankrupting the NDPERS defined benefit system, findings that were further corroborated by analysis from the system.

Although SB 2046 failed in the conference committee during the last week of the 2021 session, there were several positive developments resulting from the process. NDPERS stakeholders were able to successfully explore and debate the state's pension issues and took the conversation from the periphery to a burgeoning legislative priority. Policymakers, stakeholders, and taxpayers are now more aware of the issues at hand.

However, increasing awareness is not enough. To save taxpayer dollars and return NDPERS to a path towards full solvency, future efforts to reform NDPERS will need to include policies that address all the challenges that face the beleaguered system, especially those associated with long-term funding. Future changes need to address employer, taxpayer, and employee needs.

Examining Potential NDPERS Reform Options

At the heart of good pension reform is a commitment to paying an actuarially based contribution rate. Setting contributions to align with actuarial recommendations would require higher annual contributions in the near term but doing so would dig NDPERS out of a dangerous funding situation (see Figure 4). As seen in Table 1, paying the actuarially determined contribution (ADEC) each year could reduce long-term costs by over $3 billion by reducing expensive interest on pension debt.

Figure 4. How a Crisis Increases NDPERS Costs

Table 1. Scenario Comparison of Employer Costs—ADEC Reform

Implementing ADEC would ensure that the state contributes at a level that fully funds all accrued retirement benefits regardless of market volatility (see Figure 5). While this commitment would amortize current NDPERS debt on a fixed schedule—ideally less than 30 years—to avoid runaway interest driving up unfunded liabilities and perpetuating intergenerational inequities should also be included in any future reforms.

Figure 5 shows that when paired with an actuarially determined employer contribution (ADEC) funding policy, shorter amortization periods reduce plan debt and lower overall cost, especially during difficult economic conditions (see Table 2). Amortizing any future years' worth of NDPERS debt on schedules of 20 years or less significantly reduces the risk of runaway debts in the future.

Figure 5. How a Two Recession Crisis Impacts Debt Amortization Schedules

Table 2. Scenario Comparison of Employer Cost—ADEC Reform + Short Amortization

The use of ADEC funding policy and short amortization schedules are both best practices that should be adopted whether the existing defined benefit plan remains open or not, as these policies would essentially address the current $1.4 billion hole North Dakota currently finds itself in. That said, additional proactive reforms would still be necessary to ensure the system avoids future runaway costs, such as lowering the NDPERS assumed rate of return on investments to limit the system's exposure to market volatility.

Managing Future Risk through Expanded Retirement Choice

State policymakers should also explore policy reforms to offer new retirement options that better match the needs of today's mobile modern workforce, which is poorly served by retirement designs that rely on long career tenures.

The simplest way for North Dakota to slow the growth of unexpected costs in the future would be to improve the retirement plan choices available to public workers in North Dakota today, which currently consist of the traditional, default defined benefit (DB) pension plan and the NDPERS defined contribution (DC) retirement plan option available only to non-classified workers by written election today.

According to the North Dakota Office of Management and Budget, there were 7,860 benefited state employees in March of 2021. Only 926, or 12 percent of benefited employees were *eligible* to join the NDPERS defined contribution plan, and even these 12 percent currently default into the NDPERS defined benefit pension, rendering the current "choice" moot, in effect. The results of this restriction and enrollment method heavily favor the defined benefit plan and basically creates an illusion of choice where little exists.

Unlocking the availability of the state's existing DC plan to all new workers and flipping default enrollment to the DC plan would substantially limit the ability of NDPERS to incur future debt. This move would provide more choice to new workers who are increasingly mobile and less likely to stay under public employment long enough to enjoy the long-term benefits of the defined benefit plan.

Improving the NDPERS Defined Contribution Plan

Currently, the NDPERS DC plan boasts very healthy contributions rates of an aggregate 14.12 percent of salary, which is aligned with industry best practices. However, there is still room for improvement to make the DC plan a more attractive choice for employees.

North Dakota's DC plan objectives are currently not clearly defined. Although the plan seeks to provide retirement income, it does not set an income replacement goal or cost targets. This makes it hard to tell if the plan is achieving retirement security for members. Also, the DC plan's standard distribution method is a lump sum, and the plan doesn't offer a lifetime annuity option. Without a default annuity option, there's a heightened risk that DC plan members may prematurely exhaust their retirement fund.

In future efforts, the legislature could also consider a choice-focused retirement reform that could keep a defined benefit option for new workers instead of permanently ending it, as SB 2046 attempted. This could be achieved by creating a new risk-managed pension benefit tier for new hires with cost and risk-sharing features incorporated into the fundamental design that naturally winds up as the legacy NDPERS pension tier in effect today winds down through attrition over time.

This new tier should include a 50/50 cost-sharing provision to help reduce the risk for public employers and taxpayers. Cost-sharing means that employees would match every dollar an employer contributes to the fund. A new reduced-risk tier would also need a firm commitment to paying the actuarially required contribution rate to avoid debt, more conservative actuarial assumptions, and a short amortization schedule to ensure any new debt is quickly paid off.

It's important to responsibly pay off the current legacy NDPERS pension liabilities no matter what happens with new-hire retirement benefits. Amortizing unfunded liabilities associated with any legacy pension plan over total state payroll (legacy pension participants + new and existing defined contribution participants)—as Oklahoma, Arizona, Florida, Utah, and other states have done in similar situations—ensures that legacy unfunded liabilities are paid down in a fiscally prudent manner.

Conclusion

North Dakota's retirement system has a clear need for reform. We've outlined a few options that would ensure fiscal solvency, reduce long-term risk for taxpayers and maintain attractive retirement options for state workers. Despite the lack of legislative changes in 2021, momentum for reform is clearly building. It's important to build on this interest during the interim to ensure the 2023 legislative session is more successful. Policymakers should keep in mind that of all the possible outcomes, leaving NDPERS' problems unaddressed will end up being the most expensive and least secure option for North Dakotans, and this challenge will only become more difficult to address as time passes.

House Bill 1039 & 1040
North Dakota Retirement and Investment Office (RIO) on behalf of the Teachers' Fund for Retirement Board of Trustees
Neutral Testimony related to HB 1039 & 1040 before the House Government and Veterans Affairs Committee
Representative Austen Schauer, Chair
Representative Bernie Satrom, Vice Chair

Janilyn Murtha, JD, MPAP – Executive Director

I. Introduction

The Retirement and Investment Office (hereinafter "RIO") was created by the 1989 Legislative Assembly to capture administrative and investment cost savings in the management of the investment program of the State Investment Board (SIB) and the retirement program of the Teachers' Fund for Retirement (TFFR). Statutory authority for the agency is found in North Dakota Century Code chapter 54-52.5 and the programs are governed by chapters 21-10 (SIB) and 15-39.1 (TFFR).

TFFR is a qualified defined benefit public pension plan. The program is managed by a seven-member board of trustees which consists of the State Treasurer, State Superintendent, two active teachers, two retired teachers and one school administrator all appointed by the Governor.

The plan covers North Dakota public school teachers and administrators. Benefit funding comes from member and employer contributions (43%) and investment earnings (57%). During the past decade, active membership has increased 16.4% from 10,138 to over 11,800 participants, while retirees and beneficiaries have increased 26.0% from 7,489 to over 9,400.

Our 2022 actuarial valuation projects the TFFR plan to reach 100% fully funded status by 2044. The successful funding path is largely attributable to the statutory changes to the plan, including the creation of a tiered benefit structure and increase in contributions passed by the Legislature in 2011.[1]

II. Neutral Testimony relating to HB 1039 & HB 1040

The TFFR Board of Trustees believes that defined benefit plans provide a valuable recruitment and retention tool for government entities when managed correctly and funded appropriately. TFFR employers are largely school districts which employ both TFFR and Public Employee Retirement System (PERS) members. From a public policy perspective, the TFFR Board is concerned that closing the PERS Main Defined Benefit plan will have a negative impact on the recruitment and retention efforts for the non-teaching employees of its school district employers.

[1] H.B. 1134, 62nd N.D. Legislative Assembly (2011-2013).

The TFFR Board does recognize, however, that the PERS Main Defined Benefit Plan and the TFFR plan are currently on distinctly different funding paths. While the TFFR plan is projected to reach fully funded status by 2044,[2] the PERS Main Defined Benefit Plan is not projected to reach 100% fully funded status.[3] The TFFR Board recognizes that TFFR's funding success is largely attributable to the plan design and contribution changes adopted by the Legislature through H.B. 1134 in 2011; whereas the version of S.B. 2108, the PERS funding bill, which was ultimately approved in 2011, removed the final contribution increase needed for the PERS Main Defined Benefit plan. The TFFR Board observes that the legislature must pursue some type of change to address the PERS Main Defined Benefit Plan funding shortfall. The TFFR Board is therefore not opposed to either HB 1039 or HB 1040 in their current form so long as the public policy of closing defined benefit plans does not extend to defined benefit plans that are on a correct funding path, such as the TFFR plan.

III. Summary

The changes proposed by HB 1039 and HB 1040 reflect an attempt to correct a funding shortfall for the PERS Main Defined Benefit Plan and to the extent that the public policy implications of these bills do not extend to defined benefit plans that are projected to reach 100% fully funded status the TFFR Board of Trustees takes a neutral position on this legislation.

[2] 10-26-22 ND Legislature Employee Benefits Programs Committee meeting, Presentation by the Segal Group, Inc. regarding the July 1, 2022, actuarial valuation of TFFR, p. 28, 29.

[3] 10-26-22 ND Legislature Employee Benefits Programs Committee meeting, Presentation by GRS regarding the July 1, 2022, actuarial valuation of PERS Main System, p. 33.

North Dakota Legislative Council

Prepared by the Legislative Council staff
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HOUSE BILL NO. 1040 - SUMMARY

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

CLOSURE OF THE DEFINED BENEFIT PLAN

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

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

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

Employer Contribution

Political Subdivisions

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

State

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

Employee Eligibility

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

DEFINED CONTRIBUTION PLAN

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

Contribution

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

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

Employer Contribution for DB Plan

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

Plan Design

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

LEGACY EARNINGS FUND

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

GENERAL FUND APPROPRIATION

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

SECTION-BY-SECTION SUMMARY

North Dakota Century Code

Section 1

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

Section 2

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

Section 3

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

Section 4

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

Section 5

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

Section 6

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

Section 7

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

Section 8

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

Section 9

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

Section 10

Section 10 is a housekeeping change.

Section 11

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

Section 12

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

Section 13

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

Section 14

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

Section 15

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

Section 16

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

Section 17

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

Section 18

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

Section 19

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

Section 20

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

Section 21

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

Section 22

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

Section 23

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

Section 24

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

Section 25

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

Section 26

Clarifies distribution under the DC plan may include annuities.

Section 27

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

Section 28

Clarifies the use of the term "deferred member."

Section 29

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

Section 30

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

Special Clauses

Section 31

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

Section 32

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

Section 33

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

Great Public Schools NORTH DAKOTA UNITED *Great Public Service*

Testimony before the House Government and Veterans Affairs Committee
In opposition to House Bill 1040
Nick Archuleta, North Dakota United
January 13, 2023

Chairman Schauer and members of the Committee, for the record my name is Nick Archuleta, and I am the president of North Dakota United. I rise today on behalf of our 11,500 members to urge a DO NOT PASS recommendation on HB 1040.

Mr. Chairman, you have just heard the numbers shared with you by PERS Executive Director Scott Miller and former ND OMB Director Pam Sharp, relating to what it will cost to close the PERS defined benefit plan to new employees on January 1, 2025. I am not going to rehash what they said because they understand the numbers and methodologies used to arrive at those numbers certainly better than me, and probably better than most people in this room. That said, $5.547B over the next 20 years is an incredible sum to close a plan that can be saved for far less.

What I will talk about today, though, are our concerns associated with the closure of the PERS Defined Benefit Retirement Plan:

- Closing the defined benefit plan will have a negative impact on the ability of the state and political subdivisions to recruit and retain the resolute and high-quality personnel necessary to deliver the vital services that North Dakota's citizens deserve and depend on every day. On average, according to the Hay Group study, public employees are paid anywhere from 7 to 12 percent less than their similarly trained and experienced counterparts in the private sector. The defined benefit retirement plan and the PERS healthcare plan are key factors to attract good people to public service.

- This legislature cannot bind future legislatures to pay the exorbitant cost for shutting down this plan. We have been tethered to a commodities-based economy since before statehood and we have seen oil and agriculture in very good times as well as in very bad times. What will happen when future legislatures cannot or will not appropriate the funds necessary to keep PERS solvent? We fear that PERS will run out of money and the state will not be able to honor its commitments to current retirees and those currently in the plan.

- The Defined Contribution plan that will be the only choice afforded future state employees is not popular now. According to a recent Human Resource Management Service (HRMS), only 3% percent of state employee survey respondents expressed their preference of a defined contribution plan as opposed to a defined benefit plan. Forty two percent STRONGLY prefer a DB plan.

- According to Milliman, the firm hired by the Retirement Committee to serve as its actuarial expert, DC plans are, "an inefficient use of taxpayer money."
- The only thing guaranteed about a defined contribution plan is the amount of money that goes into the plan. Less certain is what a retiree gets out, as that depends on factors beyond the control of the participant as we witnessed in real time during the recession of 2008-2009, and in every market downturn since then.

Mr. Chairman and members of the Committee, ND is not the first state to attempt to close down their defined benefit plan. In just over a decade after closing the DB plan for teachers in West Virginia, the closed retirement system was paying out more in benefits than it was bringing in in contributions, which drained the fund and hastened insolvency. Furthermore, the defined contribution plan was inadequate to help teachers build sufficient retirement reserves.

In Alaska, they closed their DB plan for teachers and have witnessed an exodus of teachers from that state. They are considering re-opening their DB plan. Similar results occurred in Michigan.

In Oklahoma, a bill was heard in their legislature to re-open their DB plan. It passed their House but was held by the Senate and wasn't acted upon prior to the adjournment of their legislature. These are cautionary tales that North Dakota can learn from and mistakes that we can avoid.

Our members believe that the narrow charge given the Retirement Committee-to develop a plan to close the PERS DB plan-prevented the Committee from exploring other, less expensive solutions to preserve a plan that public employees prefer and is an efficient use of taxpayer money. While we appreciate the hard work of the Retirement Committee and the opportunity to partake in the rich discussions of the Committee, ND United cannot support the conclusions of the Committee.

Chairman Schauer and members of the committee, for these reasons and the reasons outlined in the testimonies of those who spoke before me, we urge a do not pass on HB 1040.

Thank you for the opportunity to be here today. I am happy to answer any questions.

Testimony in opposition to HB 1040 and HB 1039
House Government and Veterans Affairs

Good morning Mr. Chairman and members of the committee. My name is Sharon Schiermeister. I am a retired state employee and I am opposed to closing the PERS defined benefit retirement (DB) plan. As a retiree, I rely on my PERS pension to cover my monthly living expenses. I am also counting on receiving that payment for my lifetime, as was promised to me when I started my employment with the State. Closing the DB plan could put my future retirement payments in jeopardy. I appreciate that the Interim Retirement Committee recognized the importance of providing funding to ensure that all retirement benefits are paid. The bills before you today include three provisions to fund the DB plan. If these bills should move forward, it is critical that this funding remain in place so all promised benefits can be paid.

My testimony today is not just from concern as a retired state employee, but as a former employee of the North Dakota Public Employees Retirement System, or PERS. I worked for PERS just short of 33 years and retired in 2019. During my career, I served as the Chief Financial Officer, Chief Operating Officer and was the Interim Executive Director prior to Mr. Miller being hired in 2018. During those years, I had the opportunity to see many changes to the retirement plan and I feel that this historical perspective may be helpful to you as you consider this important decision before you today.

The Public Employees Retirement System began on July 1, 1966. During the 1965 Legislative Session, the Legislature passed a bill establishing the initial retirement system and setting it up as a money purchase or defined contribution plan. This system was set up to provide a member with a lump sum payment upon retirement, which consisted of contributions plus earnings, subject to fluctuations in the investment markets.

The PERS defined benefit retirement plan was created in 1977 when the money purchase plan that had started in 1966 was closed by the legislature after determining the State should move to a defined benefit plan. A defined benefit plan provides an employee with a life time pension, which is calculated using the employee's years of service and salary. If an employee leaves employment prior to retirement, they are able to withdraw the employee share of contributions, plus interest.

The PERS defined contribution (DC) retirement plan was created by the 1999 Legislative Assembly as an option for non-classified state employees. It was felt that a DC plan offered more portability for employees who may not stay with State government for their career. Portability allows an employee to take their retirement account with them to a new employer. In a DC plan, the employee has the ability to vest in the employer contribution over a short period of years. Vesting allows the employee to take both the employee and employer contributions, plus earnings, when they leave employment. The DC plan began January 1, 2000. There were 620 employees originally eligible to join the plan. Of that total, 239 elected to transfer from the DB plan into the new DC plan, or 39%. In 2001, eligible employees were given another opportunity to transfer from the DB plan into the DC plan. This resulted in only 4 more employees moving to the DC plan out of a total of 422 employees who would have been eligible to transfer.

Legislation was also passed in 1999 to create the Portability Enhancement Provision, or PEP, for the defined benefit plan. As mentioned above, if an employee leaves the DB plan before retiring, they were only entitled to the employee contributions, not the employer contributions. To improve the portability of the DB plan, PEP allows the employee to vest in a portion of the employer contribution if they also participate in a supplemental savings plan. Employees who use PEP are then able to take a portion of the employer contribution, along with their employee contributions, plus interest, when they leave employment.

In 2013, legislation was passed to give all state employees hired from October 1, 2013 through July 31, 2017, the option to choose between joining the DB plan or the DC plan. During this period, there were 5,090 new hires, of which 146, or 2.87%, elected to join the DC plan. This provision of the law was allowed to sunset, as no legislation was submitted to keep the DC option open for all state employees.

In 2015, legislation was passed to give members of the DC plan a one-time opportunity to transfer back into the DB plan, with the requirement to pay an additional 2% employee contribution into the DB plan. This opportunity window was from November 2015 – February 2016. At that time, there were

226 members in the DC plan, of which 170, or 75%, elected to transfer back into the DB plan.

Recovery Plan
In the 2008/2009 fiscal year the financial market had a major correction that was preceded by the tech market collapse in 2001-2002. However, the most significant effect occurred in 2008/2009 when the PERS plan lost about 24.5%. The financial consultant to the State Investment Board, which manages the PERS assets, reported that out of 224 years of US stock performance only 4 years were worse than the returns in 2008. What the plan experienced was truly a unique and significant event. As a result of this dramatic downturn in the financial markets, the long term funded status of PERS was affected and projections showed the plan could become insolvent in approximately 2040. After a significant amount of study, a proposal was brought forward to increase the contributions by 8% over the period from January 2012 to January 2015 which was projected to close this funding deficit. It became known as the PERS 4-year recovery plan and was based upon the concept that the recovery should be shared between the employer and employee. As proposed, the State would pay approximately 25%, the political subdivision employers would pay 25% and the employees would pay the remaining 50%. Essentially, this was a 50/50 split between employers and employees. It was proposed to be spread over 4 years to reduce the effect of the increase in any given year on either party. The Teachers Fund For Retirement (TFFR) also had a similar recovery plan. This proposal came together in SB 2108 that was considered during the 2011 session. This proposal was intended to accomplish three objectives:

1. To stop the downward trend in the funded status of the plan
2. To stabilize the plan
3. To put the plan on a course back to 100% funded status

That session, the Legislature approved the first two years of the recovery plan which included the 2012 and 2013 contribution increases. This stopped the downward trend in the funded status and stabilized the plan. It should be noted that the Legislature passed the full 4 year recovery plan for TFFR and they are now projected to be fully funded by the year 2044.

In 2013 PERS proposed the last two years of the recovery plan contribution increases in SB 2059. It received a favorable recommendation from the Legislative Employee Benefits Committee and was included in the

Governors Executive Budget Recommendation. The bill introduced by PERS did not pass, but the third year of the recovery plan was added to HB 1452 in conference committee and passed.

In 2015 PERS proposed in HB 1080 the last year of the recovery plan contribution increases along with some benefit modifications. This included changes to the final average salary calculation, early retirement benefit reduction and changing the Rule of 85 to Rule of 90 with minimum retirement age of 60. The bill was given "no recommendation" by the Legislative Employee Benefits Committee, and was included in the Governors Executive Budget Recommendation. The bill did not pass; however, the benefit changes were added in conference committee on the OMB bill at the end of the session and passed.

PERS submitted HB 1053 in 2017 for the last year of the recovery plan contribution increases. The bill received a favorable recommendation from the Legislative Employee Benefits Committee but was not included in the Governors Executive Budget Recommendation due to the fiscal constraints facing the State. The bill did not pass.

PERS submitted 3 bills in the 2019 session to address the funding concerns of the plan. This included SB 2048 for the last year of the recovery plan contribution increases, SB 2047 to reduce the benefit multiplier for new employees, and SB 2046 to discontinue the Retiree Health Insurance Credit (RHIC) program for new employees and direct the 1.14% employer contribution to the DB plan. These bills all received a favorable recommendation from the Legislative Employee Benefits Committee and the contribution increase was included in the Governors Executive Budget Recommendation. The bills to reduce the multiplier and discontinue the RHIC passed, but the contribution increase bill did not pass.

PERS submitted 2 bills in the 2021 session to address the funding concerns of the plan. This included SB 2042 to have employers pay the actuarial determined contribution and SB 2046 for the last year of the recovery plan contribution increases. Both bills received a favorable recommendation from the Legislative Employee Benefits Committee and the contribution increase was included in the Governors Executive Budget Recommendation. Both bills failed to pass.

I believe this history tells us the following:

1. **State Employees do not have a strong desire to be in a Defined Contribution plan.**
   - Less than 40% of eligible employees made the initial move into the DC plan
   - Less than 3% of all new state employees elected to join the DC plan when given the option
   - 75% of the DC plan participants moved back into the DB plan when given the opportunity, and agreed to pay 2% more in employee contributions

2. **Past Legislatures have not fully funded the PERS DB retirement plan resulting in employees contributing more than 50% of the cost.**
   - Only 3 years of the 4-year proposed recovery plan have been approved, despite requests being submitted repeatedly over the past 10 years.
   - Employees have taken on a greater share of the recovery through contribution increases and benefit reductions

In summary, I do not feel that closing the DB plan and replacing it with a DC plan is the right solution and would encourage a no vote on both HB 1039 and 1040. It is my understanding that SB 2239 would sustain the DB plan and address the funding concerns, while offering a DC plan as an option for new employees. I would encourage your support of that bill. Thank you for the opportunity to provide testimony.

#18199

OPPOSITION TO HOUSE BILLS 1039 AND 1040

Coalition for Retirement Stability

House Bills 1039 and 1040 Close the Defined Benefit Plan and Requires All New Employees to Enroll in a Defined Contribution Plan

HOW MUCH DOES IT COST?

The table below compares the cost of closing the Defined Benefit Plan over 20 years to providing Actuarial Determined Employer Contribution (ADEC) funding to the Defined Benefit Plan over the same time period.

	Total cash outlays over 20 years to close ND Defined Benefit Plan Assumes 4.5% Investment Return Due to Sold Assets	**Total cash outlays over 20 years with ADEC funding. Defined Benefit Plan funded over 80% after 20 years** Assumes 6.5% Investment Return
General Fund Transfer	**$250 Million**	**$0**
Legacy Fund Earnings Transfers	**$630 Million**	**$0**
ADEC for Defined Benefit Plan	**$3.721 Billion:** General Fund: $1.974B, Special Funds: $1.414B, Federal Funds: $333M	**$725 Million:** General Fund: $362M, Special Funds: $261M, Federal Funds: $102M
ADEC Allocation Based on Defined Contribution State Payroll	**$946 Million**	**$0**
	Additional State Cost to Close Defined Benefit Plan: **$5.547 Billion**	**Additional State Cost to fund Defined Benefit Plan with ADEC:** **$725 Million** Increased Employer Contributions for Political Subdivisions Amounts to $795M

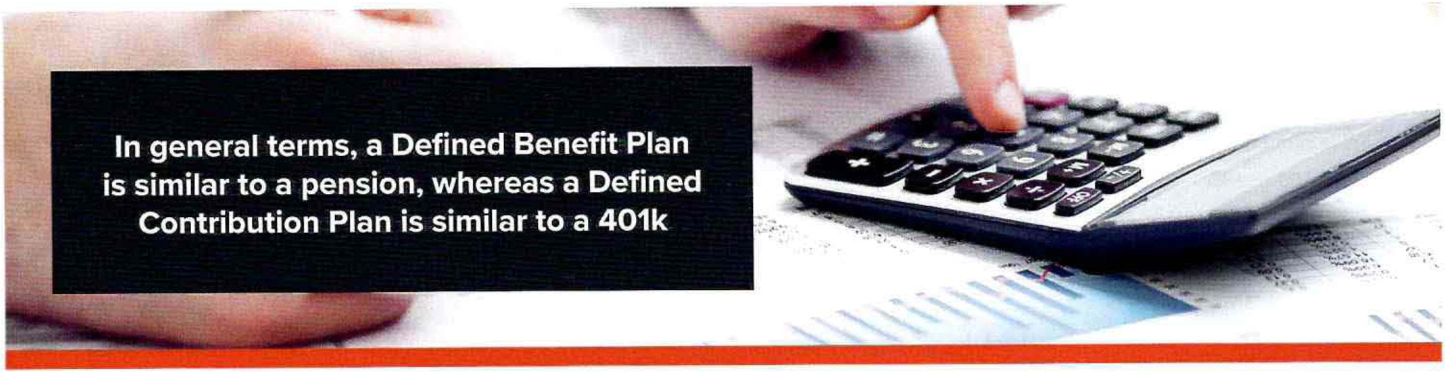
USE OF LEGACY FUND EARNINGS IS WRONG

Using funds from the Legacy Fund Earnings to close out North Dakota's Defined Benefit Plan is wrong.

Appropriating $630 million from the Legacy Fund earnings to close the defined benefit plan provides absolutely nothing for the citizens of North Dakota.

BAD FOR RECRUITMENT AND RETENTION

- State employees are paid less than the private sector is paid. The Defined Benefit Plan helps make up for the lesser salary. Closing the Defined Benefit Plan takes away that benefit.
- Only 2.87% of new employees elected to join the Defined Contribution Plan when it was made available to them from 2013 to 2017.
- Just 3.95% of State employee survey respondents preferred a Defined Contribution Plan over a Defined Benefit Plan in the HRMS Survey of Current Employees.
- Current Defined Contribution Plan has mandatory contribution rate of 15.26% (7% employee + 8.26% employer). New Defined Contribution Plan has a mandatory contribution rate of 9.26% (4% employee + 5.26% employer). Employees may elect to contribute 3% more and State would match.



The proposed Defined Contribution Plan generates about half of the retirement income of the current Defined Benefit Plan.

Defined Benefit Plan with 1.75% multiplier vs Defined Contribution Plan with 6% return

EXAMPLE:

An employee with 21 years of service, final average salary of $40,000.

Defined Benefit Plan		Defined Contribution Plan
1.75% Multiplier	← →	6% Return
Generates $14,700 Annually in Retirement		**Generates $7,640 Annually in Retirement**
		(Assuming Individual Takes Out 4% Per Year)

› NO DISABILITY PLAN

The Defined Contribution Plan does not provide an option for long-term disability, while the Defined Benefit Plan includes long-term disability. This is particularly bad for public safety personnel.

› HOW DID WE GET HERE?

The 2008 financial crisis caused the fund's assets to drop by over 20% and subsequent legislative assemblies have not funded the complete recovery plan to get the fund back on track.

› NO LEGISLATURE CAN BIND A FUTURE LEGISLATURE

This bill assumes future legislatures will appropriate very large sums of money over 20 years, but cannot require them to do so.

› WHAT HAPPENS IF FUTURE LEGISLATORS DO NOT APPROPRIATE ALL THE FUNDING?

The fund will continue to pay retirement benefits until the fund is spent down to zero, when no more retirement benefits will be able to be paid, even though the state is obligated to pay those retirement benefits.

]Representative Mike Lefor – Testimony

Good Morning, chair Schauer, vice chair Satrom, and members of the Government and Veterans Affairs Committee, for the record my name is Mike Lefor and I represent District 37 – Dickinson in the House. I bring HB 1040 to you for consideration. This bill comes to you from the interim Retirement Committee which was required to study closing the defined benefit plan for the PERS main system retirement plan to new hires effective January 1, 2024 (2025) and to open a defined contribution plan to new hires after that date.

There are two bill drafts one draft with a January 1, 2024, date and the bill which provides for a January 2025 option. The committee preferred the 2025 option to provide a reasonable time for PERS to transition to the defined contribution plan.

In this process, the committee sought the guidance of TIAA, the worlds largest defined contribution plan advisers in the world, the Reason Foundation known for their expertise in retirement planning. The committee received testimony from four other states and their experience with pension plans. An important component to the bill would be to ascertain the cost of funding the states portion of the following;

1. The employer contribution and employee contribution portion paid by the state for the defined benefit plan.
2. The employer contribution and employee contribution portion paid by the state for the new defined contribution plan.
3. A twenty-year plan to pay off the current NDPERS unfunded liability.

Those components are also called actuarially determined employer contribution or ADEC for short. The figure would be provided to the legislature no later than November 15th of each even numbered year prior to the following legislative assembly.

We also looked at many statistics (all statistics are actuarial in nature).

Fiscal	Assets	Liabilities	Unfunded	Funded Ratio
2000	1,009,744,796	879,189,877	130,554,919	114.8%
2005	1,210,287,848	1,333,491,341	(123,203,493)	90.8%
2010	1,576,794,397	2,156,560,553	(579,766,156)	73.1%
2015	2,027,476,214	2,976,071,808	(948,595,594)	68.1%
2020	3,112,920,033	4,557,679,020	(1,444,758,987)	67%
2022	3,440,000.000	5,300,000,000	(1,860,000,000)	64.95%

Additionally, the legislature has made a couple of changes to code to lower future expenses.

1. In January 2016 – the rule of 85 was changed to the rule of 90 for employees hired after December 31, 2015.
2. In January 2020 – the benefit multiplier was lowered from 2% to 1.75% for members enrolled after December 31, 2019.

Both measures make our defined benefit less attractive when compared to other states who have higher multipliers. It lowers the normal cost of the defined benefit plan; however, the results of those changes will not be felt for years and there is still no plan to pay off any of the NDPERS unfunded liabilities. During committee hearings, PERS provided this information and I quote; "Current projections to close the defined benefit plan would need a total of $3 billion to keep the plan solvent until the last defined benefit member benefits are paid."

In conversations with former state chief people officer Stacy Breuer, she cited the following statistics.

1. In the past three years, the state has had a turnover rate totaling 38%. In 2016, the millennial generation become the largest in the workforce at 35%. By 2025, millennials and younger (Gen Z) will make up 75% of the workforce.
2. It is predicted these individuals will hold many different jobs by age 38, they look at their jobs as "projects."
3. From 2019 to 2022 the number of individuals who work remotely has skyrocketed as employers struggle to maintain workforce and give employees more options. Additionally, those who are in a hybrid status, meaning some work at the office and some remotely has grown as well. Working onsite has dropped.
4. "When we capture early talent at Team ND at less than 30 years of age, we are not keeping them."

In addition, the executive branch has visited with every department in state government and, as a result, their strategy to improve workforce recruitment and retention will be;

1. Increase compensation to compete in the marketplace.
2. Offer more training opportunities. Professional development.
3. Well being – Work – Home – Office
4. Benefits – Healthcare – Vacation – Retirement

With all of this information, we tasked our experts to do the following:

1. Design a "best practices" defined contribution plan to be competitive in the marketplace.
2. How do we successfully exit the defined benefit plan? What amount – percentage should we as employers invest in a defined contribution plan as a component of "best practices.?"
3. What amount of time should be given to allow for an orderly transition?
4. What are all of the potential costs associated with moving from a DB to a DC plan?

If we were to fund the actuarially determined employer contribution (ADEC) to properly fund the defined benefit plan, the defined contribution plan and fund the unfunded liability over a twenty year period, the increased cost based on current employee levels would be approximately \$95-\$100 million per year. Nearly all of these increased costs come from finally beginning to pay the bill for NDPERS. Once the debt from the defined benefit plan is paid off, our state will no longer need to worry about these sorts of massive unfunded liabilities again.

The bill being presented to you this morning, would allocate a one-time cash infusion of \$250 million. I will be offering an amendment which changes the dollars coming from the general fund to coming from the SIIF fund. Additionally, in the Legacy Streams II legislation being discussed, there is a stream which allocates \$70 million per biennium to the PERS main retirement system.

In code, the legacy streams will forward \$48.2 million to the PERS retirement system on July 1st of this year. If we are successful, this would forward nearly \$370 million to the system. That is a big ask and I understand that, however, the sooner we can invest these dollars the sooner we get that money working to get a return for the plan. Of the assets raised for the plan currently, about 50% of the dollars came from employer and employee contributions and the remaining 50% from returns on those investments.

Some of the unfunded liability comes from the political subdivisions involved in the plan. HB 1040 provides for these subdivisions to increase their employer contribution rates by 1%. We did not ask for more due to the fact that their only options were increasing property taxes or sales taxes, neither of which is an attractive option.

Regarding a defined contribution plan, TIAA (the largest defined contribution plan in the country) and the Reason Foundation (known across the country as pension experts.) weighed in with the committee the following objectives for a "best practices" defined contribution plan.

1. All employees after January 1, 2025 would be enrolled in a defined contribution plan.
2. A contribution rate of up to 12%-15% (employer and employee contributions) This plan would be up to 14%.

3. Throughout their working careers, this contribution and Social Security participation, should achieve adequate retirement security including the income target range of 70%-100%.
4. Provide 15-20 low risk investments, including in-plan annuities and a default investment option that adjusts its glide path over time including the option to annuitize a portion of their retirement savings into guaranteed lifetime income.
5. Provide employees with advice and guidance education, tools, and services throughout their lifetime that considers changing life events, (marriage, children, elder care, etc.) which allows employees to be on track to reach their lifetime goals.

These components allows for a "best practices" defined contribution plan to become more competitive in the marketplace against the public and private sectors. A defined contribution plan which provides for a 7% employer contribution and paying 4% of the employee contribution which is currently done in our states DB plan, makes it a highly attractive retirement plan to recruit and maintain good employees.

The state's current defined contribution plan is missing many of the "best practices" components I have listed in my testimony. The younger generation is not interested in a defined benefit plan otherwise why wouldn't the private sector offer this plan to recruit employees. They don't because that is not what today's labor force wants nor is it efficient.

It is important to mention that for the state's defined benefit plan, the state would continue to provide the employer contribution and a portion of the employees contribution this bill does nothing to change that. The liability for the DB plan is already there. Equate it to having a credit card debt and paying the minimum each month, you will never get it paid. Let's begin to pay this off over twenty years, right the ship, offer a "best practices" defined contribution plan, lower our turnover rate and maintain employees.

We need to fully fund our defined benefit plan until the last retiree has drawn the last check in the plan, we promised that to our valued employees.

This plan is good for our employees, provides an excellent recruitment tool for the future and gives today's employees exactly what they are looking for. The interim Retirement committee did their job and did it well. I would request a do pass recommendation from the Government and Veterans Affairs committee with a rereferral to House Appropriations. Mr. Chairman, that completes my testimony and I would be happy to answer any questions.

Testimony in Opposition to House Bills 1039 and 1040

Pam Sharp, Coalition for Retirement Stability

January 13, 2023

Good morning Chairman Schauer and members of the Government and Veteran's Affairs Committee.

My name is Pam Sharp and I represent the Coalition for Retirement Stability. This coalition is comprised of AARP, ND United, and a large group of retired state employees that have been following the interim retirement committee and this bill.

A little bit about myself for those of you who do not know me. I am a retired state employee myself. I spent over 30 years in state government - all of those years working in financial type positions within the state, including 15 years as the Director of the Office of Management and budget.

I have been following this topic for many years and have made it a point to understand the issues in PERS related to the defined benefit plan, the defined contribution plan, all aspects of the unfunded liability and why and when it happened.

As required by law, an actuarial analysis must be completed for any bill that impacts employee benefits. That actuarial analysis was completed by GRS and was received in December just in time for the Employee Benefits Committee.

All of the numbers I am going to talk about came from the actuarial analysis.
You heard Mr. Miller tell you that the present value of the cost of this bill is $4.5 Billion. I am going to talk about the cash outlays over the 20 years instead of the present value.

The actuarial analysis provided the cash outlays required to implement this plan for the next twenty years, and then even went 20 years beyond that. So that is what I used to put these numbers together.

Let's look at the first column of numbers with the heading" Total cash outlays over 20 years to close the ND Defined Benefit Plan, Assumes 4.5% Investment Return due to the Sold Assets.

Let me explain why we are using 4.5% investment return. To close the fund over 20 years, assets will have to be sold off and moved to more fixed income investments which will generate a lower return. As Scott mentioned, the actuaries assumed a few years earning 6.5%, a few years earning 5.5%, then down to 4.5%, 3.5% etc. Their estimate is that the average would amount to 4.4%. They actually provided a scenario with 4.5% so that is what is used here.

Going through those cash outlays -
General Fund 250 million
Legacy Fund 630 million
ADEC for Defined Benefit Plan - This is the new contribution rate required to close out the plan. $3.7 Billion more than what we are paying now.

The next line which says ADEC Allocation Based on Defined Contribution State Payroll of $946 million is confusing. This is an employer contribution that will go into the defined benefit plan, but the calculation is based off the payroll for the new employees in the new Defined Contribution plan. It is how the bill is written.

Those additional cash outlays over 20 years amount to $5.5 billion.

The column on the right side of the page is also from the actuarial analysis. These numbers show the difference between what we are doing right now, (our baseline) compared to if we used ADEC funding over the next 20 years. So it shows no general fund transfer, no legacy fund transfer, but it does increase employer contributions by $725 million over those 20 years. In addition, employer contributions from the political subdivisions would increase by about $795 million.

I put this example here to show that there are other solutions to consider in dealing with the unfunded liability - not just the solution that costs $5.5 billion.

Moving on - the solution proposed in HB 1040 uses $630 million of legacy fund earnings. This is part personal opinion, but also an opinion based on knowledge of the intent of the legacy fund. I was the OMB director when the legacy fund was proposed, talked about, voted in and then implemented. Spending legacy fund money for this purpose is not what anyone had in mind when the fund was created. Use of legacy fund money in this bill provides absolutely no benefit to the citizens of North Dakota. No bridge to drive over or road to drive on, no floods averted.

This bill is horrible for recruitment and retention of employees. Workforce is a problem all over the state and, as you all know, state employees are paid less than the private sector. A pension plan and health insurance benefits have always helped make up for that lack of salary. This bill takes away one of those key benefits that truly helps to recruit and retain employees.

You've already heard from Mr. Miller about the other points in this section - that only 2.87% of new employees selected the DC plan when it was made available to all new employees over a 4 year period of time and also compares the existing DC rate with the proposed DC rate.

The back side of the page shows the example that Mr. Miller talked about that shows the DC plan generating about half the retirement income of the DB plan.

The last four points on the handout are important. The fact that a DC plan doesn't provide anything for disability, while a long term disability plan is built in to a defined benefit plan. Think of a 25 to 30 year old that suffers an injury or illness three years after starting employment and has a DC plan. All that person has for disability is whatever the balance is in his fund. If it has only been three years, those funds probably wouldn't last a year, much less a lifetime.

In a nutshell, we are at this point because the 2008 financial crisis resulted in the fund losing about 20% of its value. Subsequent legislative assemblies were not willing to fully fund the recovery plan, and the unfunded liability has grown since. On the other hand, the legislative assemblies did fully fund the recovery plan for TFFR plan, and that plan is doing well.

This bill has a very large price tag, and assumes future legislatures will be willing to continue funding the closure of the DB plan over 20 years. They cannot be required to do so, and they may very well choose not to. Right now, the state has a lot of money, but what happens if we have a few years of low oil prices, what if we have a drought at the same time, or a flood or similar disaster? That legislative body will likely have different funding priorities and this payment would likely fall to the bottom of the priority list. Also consider term limits and the fact that ten years from now we could have all new legislators that may or may not want to foot this bill.

That would be the worst case scenario. If that were to happen, that fund would continue to pay retirement benefits until there is no more money, then the benefits would stop for all retirees - including the judges retirements in the judges's DB plan and all the retirees in the public safety DB plan, because all the funds are in the same trust. Obviously, that is truly the worst-case scenario, and I am certainly not saying that will happen, but this bill could potentially set that in motion.

I urge you to vote no on this bill, and to come up with a more affordable solution to deal with the issue of the unfunded liability.

Thank you Mr. Chairman. This concludes my testimony.

January 13, 2023

Government and Veterans Affairs Committee

Testimony on HB's 1040 and 1039

Mr. Chairman and members of the Government and Veterans Affairs Committee, it is my privilege to appear before you today in opposition to HB's 1040 and 1039. I worked for the State Auditor's Office for over 36 years before retiring because of health issues in September of 2013. I believe these bills will be detrimental to the hiring and retaining of future state employees. In addition, I believe they also will cause current and retired state employees genuine concern as to whether the state will live up to its responsibility to pay their full retirement benefits as promised when they were initially hired.

Two of the primary reasons that state employees remain with the state are the defined benefit retirement program and the excellent health care benefits. Terminating the defined benefit retirement plan removes one of these incentives. We have already heard the Governor and legislators speak about spending tens of millions of dollars on workforce recruitment and retention in the upcoming biennium. Does this effort exclude state employees? Removing half their incentive to remain employed with the state certainly appears as though it does. Why would the Legislature exclude state employees from the state's efforts? Spending millions of dollars to help private employers retain their employees while passing legislation which damages the state's ability to retain its employees makes absolutely no sense.

Switching the plan to a defined contribution plan is going to cost significantly more money over the next 20 years than fixing the plan according to actuarial calculations (hundreds of millions of dollars). Why not invest the money to fix the plan and keep one of the best aspects of employment with the state of North Dakota? As I stated in the prior paragraph, the Governor and legislators have indicated their intent to spend millions of dollars to help private sector employers retain their employees. It seems ludicrous that legislators are going to turn around and spend hundreds of millions of dollars over the next 20 years to close the defined benefit plan and reduce the retention rate of state employees.

The state employees overwhelmingly prefer the defined benefit retirement plan (as survey results show) so why invest significantly more money over the next 20 years to give them something they don't want? Most other states provide a defined benefit plan and some of those that previously switched to a defined contribution plan have either switched back or are considering it.

Media reports cite that the turnover rate for state employees last year was 14% which was the highest ever I believe. Salary studies have consistently shown that state employees are generally paid less than their private sector counterparts. These salary studies include comparisons of fringe benefits and the state's defined benefit retirement plan generally is used to offset a portion of the difference in salaries. Closing of that plan will only increase the difference and logically will result in more turnover. Those of you who are business owners or management understand the true cost of turnover.

The defined benefit plan provides the state employees a significantly better retirement benefit. Based on certain assumptions (i.e. annual rate of return), for an employee with 21 years of service who averaged $40,000 of annual salary, the defined benefit plan would provide almost double the annual retirement benefit. If the state is going to remove this substantial safety net, I believe substantially higher salaries are going to be needed in order to retain staff at the levels that are currently retained. This is especially true for the professional classifications such as lawyers, accountants, architects and engineers.

There are many other ways that the switch to a defined contribution plan is disadvantageous to state employees. For example, in the defined benefit plan their investments are pooled and the investment risks are shared by the entire pool vs the individual investor having the risk of the investments under a defined contribution plan. In the defined benefit plan experts make the investment management decisions while the individuals make those decisions in the defined contribution plan. In addition, as shown earlier the employee can estimate their future income in the defined benefit plan while in the defined contribution plan future income is uncertain.

In the interest of fairness, I am curious why the Teachers Fund for Retirement (TFFR) defined benefit plan is not included in this legislation. Its latest audit shows its retirement fund has more than $1 billion in unfunded liabilities. I understand that the organization has taken steps to bring the unfunded liabilities under control by the year 2045. The question remains why isn't the Legislature pursuing other options for the PERS defined benefit plan? Why are we pursuing this "nuclear option" rather than some other approach? Did the interim committee consider a combination of raising the employer and employee contributions as well as contributions from the general fund and Legacy Fund earnings and request an actuary to calculate the impact on the PERS retirement fund over 30 years? Wouldn't that be worth considering before killing the defined benefit plan?

A cynical person might speculate that politics had a hand in excluding certain groups from these two bills. The vast majority of state employees live in and around Bismarck-Mandan and thus those legislators are going to receive the phone calls and emails complaining about closing the plan. If the TFFR plan was included, legislators from across the state would be subjected to the complaints. In any case it is unfair to subject state employees to the "nuclear option" without seriously considering other options. The state did increase the contributions about 10-12 years ago as a result of trying to help the plan (as a result of a consultant's recommendation). The recommendation was that state employees and the state would each increase their contribution 1% for 4 straight years. However, the Legislature ceased its commitment to this plan after 3 years.

Current and retired employees will have real and understandable concerns about receiving their full and promised retirement benefits if the defined benefit plan is ended. While this legislature can pass a law requiring future contributions from Legacy Fund earnings, future legislatures can just as easily repeal that section of the law. This legislature cannot bind future legislatures to supporting the full payment of the commitments made to the current and retired state employees.

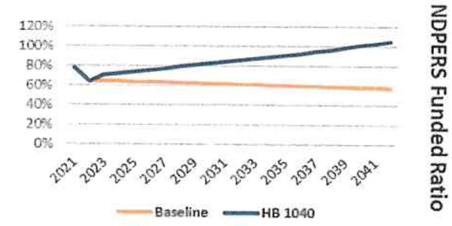
In summary, I believe these bills will result in spending hundreds of millions of additional dollars over the next 20 years to close the plan than would be necessary to fix it. In addition, the end result will be a retirement plan the vast majority of state employees do not want and ultimately this will result in damaging the hiring and retention of state employees. This is ironic and entirely unfair to state employees as it comes at a time when the Governor and the Legislature are proposing to spend significant state funds to help private entities hire and retain employees. Furthermore, passage of these bills will only cause current and retired state employees serious and understandable concern as to the state's intention of honoring their responsibility to pay them their full retirement that they earned and were promised when they were hired.

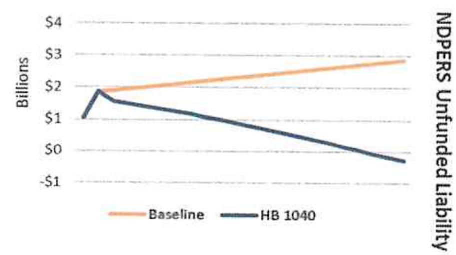
I respectfully request that you give HB's1040 and 1039 a do not pass recommendation. Thank you for your time and I would do my best to answer any questions the committee may have.

North Dakota Public Employees Retirement System (NDPERS)

REFORM ALERT:
Benefits of House Bill 1040

Commits the State to Fully Funding All NDPERS Retirement Benefits





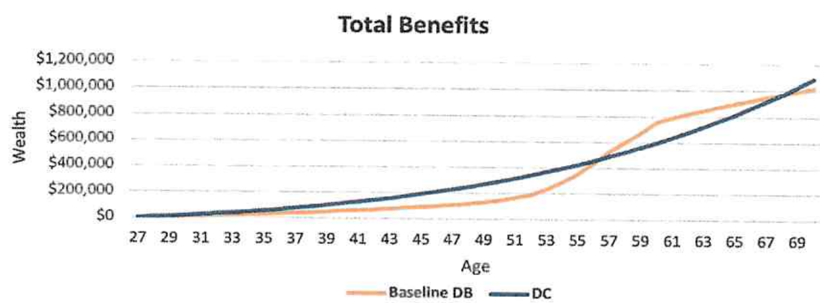
- ✓ NDPERS currently holds $1.8 billion in unfunded pension promises and expects to be insolvent in 80 years absent reform, largely due to insufficient funding and interest on accumulating debt.
- ✓ HB 1040 would shift NDPERS to an industry standard and actuarially sound method of funding, ensuring the state can deliver on its promises to members and retirees.

	Baseline	HB 1040
Total Employer Contribution	$2 Billion	$4.1 Billion
Ending Unfunded Liability	$2.8 Billion	-$275 Million
Total Long-term Cost	$4.9 Billion	$3.9 Billion

Saves Money for North Dakota and Taxpayers

- ✓ By making a commitment to paying off NDPERS debt once and for all, the state can expect to save over $1 billion in NDPERS costs over the next 20 years.

Improves Benefits For Most NDPERS Employees



*Reflects a 27-year-old new hire earning the average NDPERS entry age salary of $38,703 and participating in the full DC match..

- ✓ According to Pension Integrity Project analysis, for an average entrant into NDPERS, the proposed defined contribution plan's benefits will be more generous than the current NDPERS defined benefit plan.

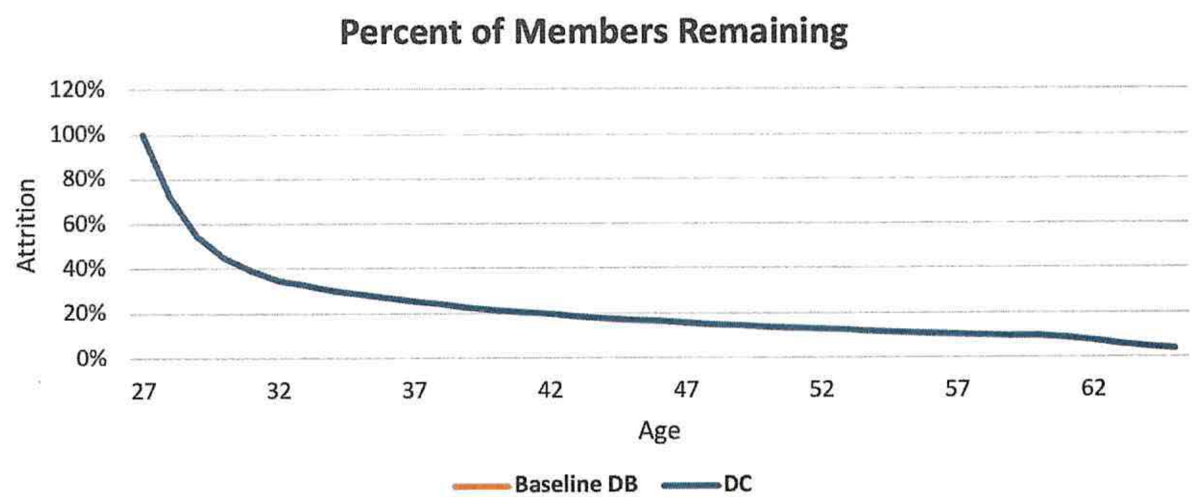
PENSION INTEGRITY PROJECT CONTACTS

- Leonard Gilroy, Senior Managing Director (lenard.gilroy@reason.org)
- Ryan Frost, Policy Analyst (ryan.frost@reason.org)

Reason Foundation is a national 501(c)(3) public policy research and education organization with expertise across a range of policy areas, including public sector pensions, transportation, infrastructure, education, and criminal justice. For more information about the Pension Integrity Project at Reason Foundation, visit reason.org.

Better Retirement Security for 85% of New North Dakota Public Employees Retirement

- ✓ NDPERS has one of the highest turnover rates of any defined benefit plan in the country.
- ✓ Approximately 50% of all new hires leave NDPERS service before they reach the plan's vesting period of three years.
- ✓ This means that half of all members leave their job with only a refund of their own contributions, plus interest. They forfeit any employer contributions made and are not eligible for any pension benefit.
- ✓ The Defined Contribution plan established in HB 1040 would ensure that all employees are on the right path to a healthy retirement, not just the few who will be staying for 30+ years.



Why Not Maintain the Status Quo?

- ***Workers have already spoken!*** *86 out of 100 state employees hired today will leave their public employer before earning an unreduced NDPERS pension.*
- *The benefit offered to future state employees in House Bill 1040 provides benefit portability with a guaranteed employer contribution and match, making North Dakota public sector retirement benefit just as—or more—attractive to private sector offerings.*

PENSION INTEGRITY PROJECT CONTACTS

- Leonard Gilroy, Senior Managing Director (lenard.gilroy@reason.org)
- Ryan Frost, Policy Analyst (ryan.frost@reason.org)

Does the Defined Contribution Plan Established in House Bill 1040 Meet Gold Standards?

reason FOUNDATION

Gold Standard	DC Plan in HB 1040
Adequate Contributions *Replace approximately 80% of a worker's final salary. Match structure facilitates strong contribution rates.*	Yes
Benefit Portability *Provide meaningful benefit accrual for all periods of service and safeguard the ability to recruit highly mobile 21st Century employees.*	Yes
Offer Distribution Options *Provide members with a variety of asset distribution methods while limiting borrowing.*	Yes
Auto Enrollment *Enroll new employees into the new NDPERS DC plan by default.*	Yes
Defined Plan Objectives *Ensure plan objectives are defined in writing as part of a comprehensive benefits policy statement.*	Yes
Communication and Education *Ensure members are educated on the available choices and have all relevant information to make competent retirement choices.*	Yes
Retirement Specific Portfolio Design *Offer "one-touch" investment options for employees who are not sophisticated investors and do not want to avail themselves of in-plan investment advice.*	Yes
Disability Coverage *Offer a separate disability insurance benefit from a quality insurer.*	No

Ryan Frost, Senior Policy Analyst (ryan.frost@reason.org)

Objective	Gold Standard	DC Plan in HB 1040
Adequate Contributions	Replace approximately 80% of a worker's final salary.	*The range of potential employer and employee contributions under the bill is a low of 8.12% for those who do not make any voluntary contribution to a high 14.12% of compensation for those who make a 3% voluntary contribution. The 8.12% level would not meet our best practice standard because it is unlikely to generate at least an 80% income replacement with Social Security taken into account. The bill would meet best practice standards for those who make at least a 2% voluntary contribution.*
Benefit Portability	Safeguard the ability to earn meaningful benefits for all periods of service and to recruit highly mobile 21st Century employees.	*Employer contributions into the DC Plan are vested on a scale over four years of service – 50% after 2 years, 75% after 3 years and 100% vesting on completion of 4 years of service. Employee contributions are, of course, immediately vested. This vesting schedule partially meets our best practice standards because accruals are not fully portable until after 4 years. Full and immediate vesting would be preferred.*
Offer Distribution Options	Provide members with a variety of asset distribution methods while limiting borrowing.	*HB 1040 adds annuity distribution options to the current standard distribution method offered under the DC plan of a lump-sum withdrawal upon retirement. The employee can also roll this distribution over to an IRA or take periodic distributions. The addition of in-plan annuity distribution options in the Bill is a significant improvement to the current DC plan design and meets our best practices standards.*
Auto Enrollment	Defaults members into a defined contribution retirement option if no other option is selected upon hire.	*All new NDPERS hires on or after January 1, 2025 are automatically enrolled into the DC plan.*
Defined Plan Objectives	Defines objectives in writing as part of a comprehensive "benefits policy statement."	*While 2023 HB 1040 does not provide a formal statement of benefit policy or objectives, the structure of the new DC plan reflects the objectives state by other similar plans*
Communication and Education	Educates members on the available choices and relevant information needed to make competent retirement decisions.	*HB 1040 continues to require the PERS Board to provide DC plan participants with general information regarding account balances, participant assumption of investment risk, administrative and investment costs, and projected benefits. New requirements are added under the bill to provide participants enrollment information, benefits of a defined contribution plan, investment options, and assumptions of risk and costs. The Board must provide investment and retirement income planning, education on how to set, measure, and adjust income and savings goals based on desired retirement income, participant behaviors, and changing circumstances. Retirement income education regarding distribution options and in-plan annuitization features must be provided. With these legislative mandates, the Board's communication and education services will be significantly enhanced over the current treatment of the DC plan as a secondary option for eligible employees.*
Retirement Specific Portfolio Design	Offer "one-touch" investment options for employees who are not sophisticated investors and do not want to avail themselves of in-plan investment advice.	*HB 1040 improves on the investment offerings in the NDPERS DC Plan by requiring the offering of risk-managed packages of investment portfolio options that reallocate and rebalance automatically as a participant ages. The default investment must meet federal Qualified Default Investment Alternative requirements for ERISA plans. The QDIA must include an in-plan annuity. The general investment menu must include a diversified group of mutual funds and in-plan life-time annuities. The Bill establishes requirements for the selection of qualified annuity providers to help guide the Board toward strong providers.*
Disability Coverage	Offer a separate disability insurance benefit from a quality insurer.	*There is no disability coverage provided for employees participating in the DC Plan. The only option for disabled participants is to take distributions from their accumulated retirement assets. A simple solution would be to offer a private disability insurance plan, similar to the Arizona Public Safety Disability plan. Members and employers would make a small contribution to the insurance plan, and depending on the age and years of service the member attains, they would be able to draw a disability benefit from that program. Another option would be to allow continued participation in the PERS DB plan disability benefit.*

Ryan Frost, Senior Policy Analyst (ryan.frost@reason.org)

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

WHO WE SERVE

24,779
Active Members

14,204
Retired Members

16,283
Deferred Members

473
Participating Employers

KEY RETIREMENT FACTS

Opening its doors in July 1966, the Public Employees Retirement System has since grown to administer **ten retirement plans** for the State of North Dakota along with numerous insurance plans.

The breadth and complexity of the benefits that NDPERS administers make it one of the most unique state government agencies in the entire nation.

Historical Financial Breakdown as of September 2022

$2.7 B
Contributions received

$2.9 B
Paid benefits

$3.5 B
Value of Assets

TEN RETIREMENT PLANS ADMINISTERED BY NDPERS

EE represents Employee

Main
Hybrid Plan – Three Benefit Tiers

Total Participants:	53,175
Current Funded Ratio:	64.9%
Employee Contribution Rate:	7%
ER Contribution Rate:	8.35%

Public Safety
With Prior Service

Total Participants:	1,562
Current Funded Ratio:	72.6%
Pol Sub EE Contribution Rate:	5.5%
BCI EE Contribution Rate:	6%
Employer Contribution Rate:	9.81%

Public Safety
Without Prior Service

Total Participants:	406
Current Funded Ratio:	92.5%
Employee Contribution Rate:	5.5%
Employer Contribution Rate:	7.93%

Highway Patrol

Total Participants:	341
Current Funded Ratio:	66.1%
Employee Contribution Rate:	14.3%
Employer Contribution Rate:	20.7%

Judges

Total Participants:	123
Current Funded Ratio:	108.2%
Employee Contribution Rate:	8%
Employer Contribution Rate:	17.52%

Job Service

Total Participants:	177
Current Funded Ratio:	122.2%
Employee Contribution Rate:	7%
Employer Contribution Rate:	0%

457 Deferred Compensation
Optional supplemental retirement plan

Current participants:	6,450
Market Value of Assets:	$161.3M

Defined Contribution
Open to new state non-classified employees interested in controlling their investment portfolio

Current participants:	93
Market Value of Assets:	$16.1M

RHIC – Retiree Health Insurance Credit
Eligible retirees receive $5 in monthly credit for each year they earned service

Total participants:	19,018

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

EFFORTS TO IMPROVE FUNDING: FOUR-YEAR RECOVERY PLAN AND BENEFIT REDUCTIONS

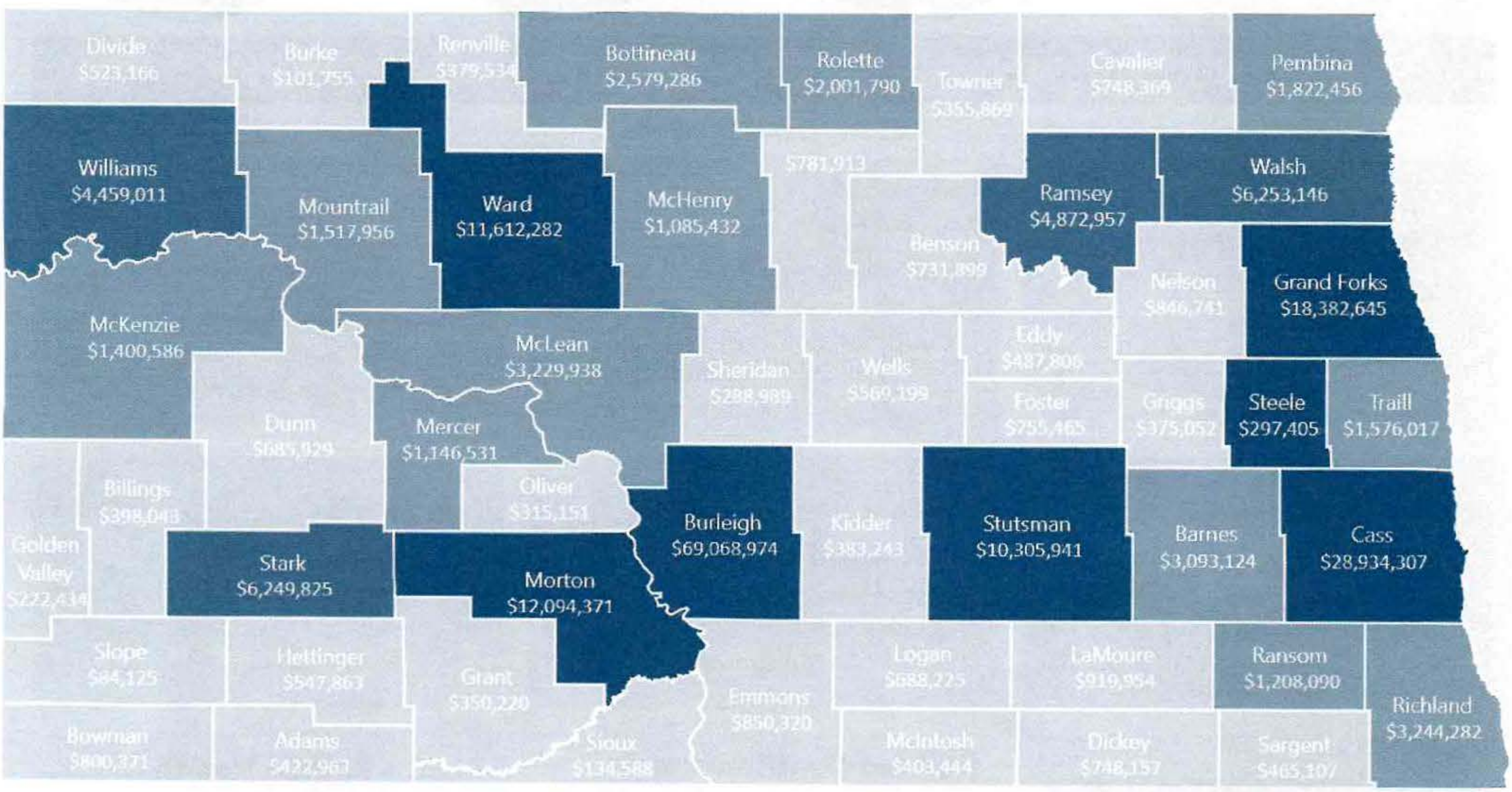
Employee Contributions

1% in 2011 + 1% in 2012 + 1% in 2013 + 1.95% Benefit Reductions = **4.95%** Total Employee

Employer Contributions

1% in 2011 + 1% in 2012 + 1% in 2013 + NOT APPROVED = **3%** Total Employer

ECONOMIC IMPACT ACROSS NORTH DAKOTA



Average Monthly Benefit
The average monthly per retiree is $1,392

Total Payments in 2022
In-state paid benefits: $211,802,243.16
Out-of-state paid benefits: $35,095,119.72

Testimony in Opposition to House Bill No. 1040

Scott Miller, Executive Director

NORTH DAKOTA
PUBLIC EMPLOYEES
RETIREMENT SYSTEM

1

1

$4.5 Billion More Expensive

- This is the present value of how much MORE expensive over the next 22 years it will be to close the Defined Benefit plan and have all new employees go into the new Defined Contribution plan, than it is to maintain the current DB plan
- Unfortunately, you cannot require future Legislatures to maintain adequate funding

Contributions to the DB Plan and DC Plan			
	Present Value of Total Employer Contributions for 2023 to 2045[1]	Difference from Baseline	Difference from Baseline - ADEC Funding
Baseline	$1,628,872,628		
Baseline - ADEC Funding	$2,451,546,855	$822,674,227	
Bill 280 - 6.50% Investment Return	$3,237,625,450	$1,608,752,821	$ 786,078,595
Bill 280 - 5.50% Investment Return	$4,494,009,269	$2,865,136,641	$ 2,042,462,414
Bill 280 - 4.50% Investment Return	$6,165,090,492	$4,536,217,864	$ 3,713,543,637

2

2

Milliman Analysis

- Milliman, the Retirement Committee's actuarial expert, did not analyze this bill
- However, they did provide an analysis of the total projected employer contributions over a 20-year period for a somewhat-similar scenario, with these differences:
  1. $50 million/biennium infusion instead of $70 million
  2. No $250 million infusion
  3. Employer contribution of 6% to the DC plan, instead of 8.26%
  4. 5.5% investment return assumption/discount rate
- Over the 20-year period analyzed by Milliman, the GRS projection, using a 5.5% discount rate, is within 2.5% of the Milliman projection when accounting for the differences in plans

3

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Milliman Analysis

Same scenarios with 5.50% interest rate	Scenario 12
Funded Ratio	
2021	70%
2031	75%
2041	101%
2051	108%
Unfunded Accrued Liability ($ millions)	
2021	1,425
2031	2,094
2041	(121)
2051	(820)
DB + DC Employer Contributions ($ millions)	
FYE 2024	330
Cumulative 2023-2032	3,324
Cumulative 2023-2042	7,720
Cumulative 2023-2052	9,534

This $7.720 billion estimate from Milliman is within 2.5% of GRS's estimate for the same timeframe when accounting for the differences in scenarios

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$470 Million Increase

- The total of additional State and Political Subdivision contributions for the 2023-25 biennium, including the $250 million from the general fund and $70 million from the Legacy Earnings fund
- Next biennium the additional contributions will be $670 million
- State Employer contribution goes up an additional 39.9%, to 48.16% of compensation
- Agencies with federally-funded positions will need to find alternate funding sources

	2023-2025 Biennium	2025 - 2027 Biennium
State Agencies (39.9% increase)	$ 146,937,828	$ 587,751,310
Counties (1% increase)	969,058	3,876,232
Cities (1% increase)	631,368	2,525,474
School Districts (1% increase)	1,304,516	5,218,065
Other Political Subs (1% increase)	249,375	997,500
Lump Sum Deposits	320,000,000	70,000,000
Total	$ 470,092,145	$ 670,368,581

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Traditional defined contribution plans - disadvantages

- Inefficient use of taxpayer money

- Milliman, the Retirement Committee's own actuarial expert, called Defined Contribution plans an "inefficient use of taxpayer money"
  - Milliman Presentation to Retirement Committee, slide 22 (April 11, 2022).
- Why is it "inefficient"?

- Inefficient use of taxpayer money: need almost twice as much $$s to fund same level of benefits as a DB plan* Still a Better Bang for the Buck: An Update on the Economic Efficiencies of Defined Benefit Pensions. National Institute on Retirement Security, December 2014

- Said another way, you can only get half the benefit in a DC plan for the same cost

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Traditional defined benefit plans - advantages

- Efficient use of taxpayer dollars

- The Retirement Committee's own actuarial expert called Defined Benefit plans an "efficient use of taxpayer dollars"
  - Milliman Presentation to Retirement Committee, slide 16, April 11, 2022
- Employees would receive about twice the retirement benefit in a DB plan for the same cost as a DC plan

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$14,700 vs. $3,944-7,640

- The average benefit in the DB plan under the Main 2020 Plan versus the average projected benefit under the new DC plan
  - Using average retiree numbers from 2021 valuation (21 years of service, final average salary of $40,000), a 1.75% multiplier, and a DC plan return of 6% compounded annually
  - Depending on the final account balance and whether the individual takes out 3.4% or 4.0% per year
- DC plans are especially difficult for public safety personnel
  - Limited disability and early retirement funds

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$200 Million

- NDPERS currently pays out over $200 million in benefits to DB retirees in the State of North Dakota. Every year.
- Total retirement payments to all beneficiaries are over $236 million per year.
- Total employer contributions last year were just under $97 million. Clearly, the return on those contributions is massive.

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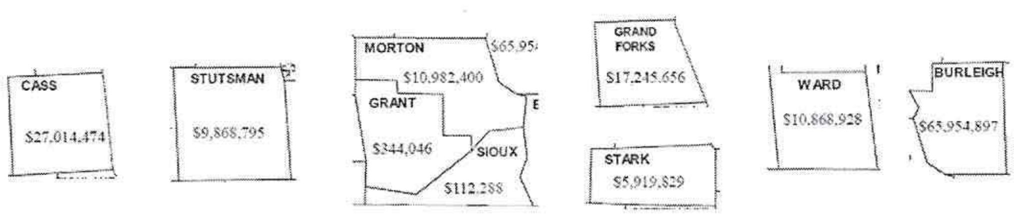
$100 Million

- Future annual benefits will be cut in half as a result of moving to a DC plan; a DC plan can only provide about half the benefit of a DB plan for the same cost, which will affect all the North Dakota communities you represent
- Similar reduction in economic benefit for your communities



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2.87%

- The percent of new employees that elected to join the DC plan from 2013-2017 when it was open and available to all new state employees
- Only 2.36% of 20-somethings elected to join the DC plan at that time
- Current state employees also strongly prefer a DB plan:

Based on the information provided, I prefer to have a defined contribution (DC) retirement plan rather than a defined benefit (DB) retirement plan.* *As stated earlier in this survey a DC plan is similar to the well-known 401(k) and a DB plan is commonly referred to as a pension.	3840	2.18	3%
Based on the information provide, I prefer to have a Defined benefit (DB) Retirement Plan rather than a Defined Contribution (DC) Retirement Plan.* *As defined earlier in this survey a DB is commonly referred to as a pension and a DC is similar to the well-known 401(k).	3858	3.95	42%

Source: 2022 HRMS Survey of Current State Employees

Percent that "Strongly Agree"

Average Rating

11

11

75%

- The percent of DC plan members who came back to the DB plan when given the opportunity to do so
- Those members agreed to pay an extra 2% of employee compensation to come back to the DB plan

12

12

15.26% vs. 9.26%

- The current DC plan has a mandatory contribution rate for new employees of 15.26%: 7% employee and 8.26% employer
- The new DC plan only has a mandatory contribution rate of 9.26%: 4% employee and 5.26% employer
  - Employee must elect to contribute more, up to 7% employee and 8.26% employer
  - In Oklahoma, only 43% of employees elect to contribute more than the minimum
- Notably, a recent study by the consulting firm Aon and the National Institute on Retirement Security found that a contribution rate of 17% of compensation is necessary for someone to retire at age 67, and 23% to retire at age 62
  - "The Real Deal for the Public Sector: Retirement Income Adequacy Among U.S. Public Sector Employees", Eric Atwater, Tyler Bond, Dan Doonan, Emily Swickard (Dec. 2022).

13

13

Employees must stay at least 2 years to vest

- The vesting schedule for <u>employer</u> contributions to the DC plan:
  - Under two years of service, 0%
  - Two years of service, 50%
  - Three years of service, 75%
  - Four years of service, 100%
- Always 100% vested in <u>employee</u> contributions

14

14

Annuity Default?

- "The qualified default investment alternative must include an in-plan annuity."
- We know of only one qualifying product, from TIAA
  - A complex product participants may not understand
  - Requires the selection of a named fund manager in addition to the underlying investments
  - Moving to a different provider may be difficult, making procurement problematic
  - Likely markedly more expensive than a target date fund
- Note this also places the fiduciary responsibility for setting this default with the Legislative Assembly rather than the Board
  - Investment costs are a primary source of fiduciary litigation
- This requirement basically creates a poor cash balance plan, not a DC plan

15

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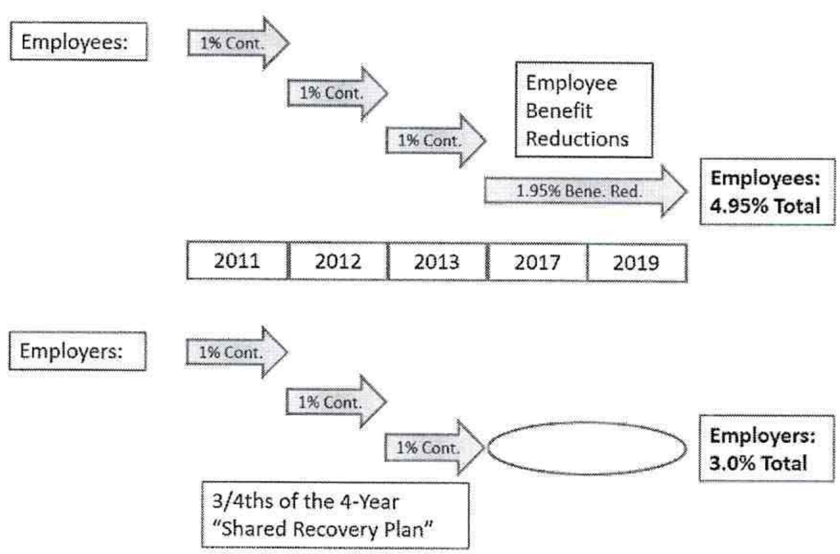
Employees Did Their Part



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16

Other States' Experience

- West Virginia – DB closure was far too expensive, and re-opened the DB plan
- Michigan – Closed the DB plan when it was 109% funded, with a $734 million surplus; in September 2019 it was 65% funded with a $6.6 Billion unfunded liability
- Alaska – closed the DB plan in 2005 and has paid billions of dollars more than anticipated; recruitment and retention issues for teachers and public safety have led to significant pressure to re-open the DB plan
- Oklahoma – closed the DB plan in 2018 and created a new DC plan somewhat similar to this bill, and has already had legislative efforts to re-open the DB plan
  - Employer contribution is 16.5% spread over both DB and DC employees
  - Costing the state more than if they had maintained the DB plan
  - Only 43% of new employees elect to contribute above the minimum
  - 87% of members who leave employment take a direct distribution rather than roll-over
  - Recruitment and retention has become a "major issue that is being discussed"

17

17

Conclusion: An Inefficient Decision

- $4.5 billion more expensive over the next 20 years
  - Future Legislatures cannot be required to adequately fund this decision
- DC plans are an "inefficient use of taxpayer money"; DB plans are "efficient"
- DC plans provide half the benefit for the same cost as a DB plan
- Retirement adequacy under the new DC plan is questionable, especially for public safety employees
- The new DC plan may result in significantly lower savings than the existing DC plan
- Employees who leave before completing 2 years of service will not take any of the employer contribution with them
- Neither new employees nor current employees have shown a desire for a DC plan
- The economic benefit to our communities could be halved, if not worse
- Recruitment and retention may become major issues for the state and political subs

18

18

Questions?

Email scottmiller@nd.gov
Call (701) 328-3901

19

19

Good morning, Mr. Chairman, and members of the Appropriations Committee.

House Bill 1040 may be the most important piece of legislation of this session and this decade.

HB 1040 closes the Main **PERS** defined benefit (**DB**) plan for new hires effective January 1, 2025, and opens a defined contribution (DC) plan to new hires after that date.

This bill comes to you after being thoroughly vetted by the interim Retirement Committee, the Employee Benefits Committee and the GVA committee for nearly a year and a half where we heard from experts and stakeholders from a variety of source.

To be clear, this pension reform bill does **not** impact any current State employee. They will receive their **full pension** benefit as contracted with the State of North Dakota.

Why is pension reform needed? It's because this **PERS** plan is in serious debt.

Our unfunded liability has climbed to **$1.8 billion dollars**.

The **PERS** plan has lost more than **two billion dollars** over the last 20 years.

This despite changing the rule of **85 to 90** in 2016 and lowering the multiplier for members from **2% percent to 1.75%** in 2019.

Still, we **drown** in debt and that debt is on the backs of taxpayers.

To be clear, **HB 1040** does **not** affect the:

- **Judges retirement plan.**
- **Public Safety plans.**
- **Highway Patrol retirement plan.**
- **Higher education retirement plan; or**
- **Job Service retirement plan.**

This closure affects all other **future** state employees, including appointed and elected officials and temporary employees, and the **374** political subdivisions that have elected to participate in the **PERS DB plan.**

The state and political subdivision employees participating in the plan will continue in the **DB plan**.

As mentioned, effective **Jan. 1, 2025**, **new** state and participating political subdivision employees will be routed in the **DC** plan.

HB 1040 would allocate a **one-time cash infusion** of $240 million from the **SIIF fund**.

In code, the **legacy streams** will forward **$48.2 million** to the **PERS DB** plan on July 1st of this year.

Additionally, in the **Legacy Streams II** legislation being discussed, there is a stream which allocates another **$70 million** per biennium into the DB plan.

The goal is to forward nearly **$370 million** to the **DB** plan.

Yes, a big ask. However, the sooner we can invest these dollars, the sooner we get that money working to get a **return** for the plan.

Of the assets raised for the plan, about **50%** will come from employer and employee contributions and the remaining **50%** from returns on those investments.

The state is required to pay an actuarially determined contribution rate that is calculated based on a closed period of 20 and a half years.

Some of the unfunded liability comes from the political subdivisions involved in the plan.

The political subs will be assessed an additional **one percent** employer contribution.

We are very mindful of not forcing political subs into higher property rates as it was the State running the **PERS** retirement program, not them.

We are working with **TIAA**, the largest **defined contribution** plan in the country, that has successfully managed our University System DC Plan for 50 years, as well as the **Reason Foundation** on a "best practices" **DC** plan.

It would include a contribution rate of **14%**; 7% employer and paying another 4% of the employee contribution which is currently being done in our **DB** plan.

We will continue to fund our **DB** plan until the last retiree has drawn the last check. That is a promise to our employees.

However, the time has come to stop making minimum payments on a credit card that carries a **$1.8 billion** dollar debt.

Mr. Chairman, committee members, **HB 1040** may not have all the answers, but it has one: This is the right vehicle to drive us out of a mountain of debt and into **retirement stability** that is affordable and honoring to our state employees.

Jenn Clark and Leader Lefor are here to answer questions you may on **HB 1040**. I must complement both for the outstanding job they've done and others in getting this plan together.

It has taken several years of hard work with a lot of obstacles to overcome, but they got the job done.

We hope you agree Mr. Chairman and committee members.

North Dakota House Bill 1040: NDPERS Reform

HB 1040 Background

- Today, NDPERS is estimated to be $1.9 billion underfunded.
- According to a recent report from the National Conference on Public Employee Retirement Systems (NCPERS), an organization that represents and advocates for defined benefit public pension plans, North Dakota is one of just five states that has an unsustainable public pension debt trajectory.
- Without HB 1040, NDPERS will continue to accrue unfunded liabilities, ultimately exhausting its assets in approximately 80 years under a best-case scenario. If market conditions worsen, the fund will run out of money much sooner.
- HB 1040 addresses many of the challenges facing NDPERS, helping turn it away from a path of perpetual underfunding, and setting it on a course to pay off the existing debt in the next 20 years.

Solving the Unfunded Liability Problem

- HB 1040 fixes the systematic underfunding that has existed for NDPERS over the past two decades by swapping from contribution rates set in statute to an "actuarially determined rate," or "ADEC" rate for short.
- ADEC is a calculation performed during the annual pension valuation process that shows what contribution rates are needed to be to pay for both benefits and debt servicing costs.
- The pension benefits promised to members of NDPERS are ultimately the responsibility of the state, local governments, and taxpayers.
- Adopting an ADEC funding policy is a crucial first step in getting North Dakota on the path to fully paying for its pension obligations.
- To assist that paydown, sponsors have added other cash infusions into this bill, beginning with $240 million in year one and another $70 million per biennium until the plan reaches 90% funded.
- Our modeling forecasts show that these added funds, coupled with the swap to a proper actuarial funding method, **would save North Dakota $1.1 billion dollars over the next 20 years relative to the status quo** and finally put NDPERS back on proper financial footing.

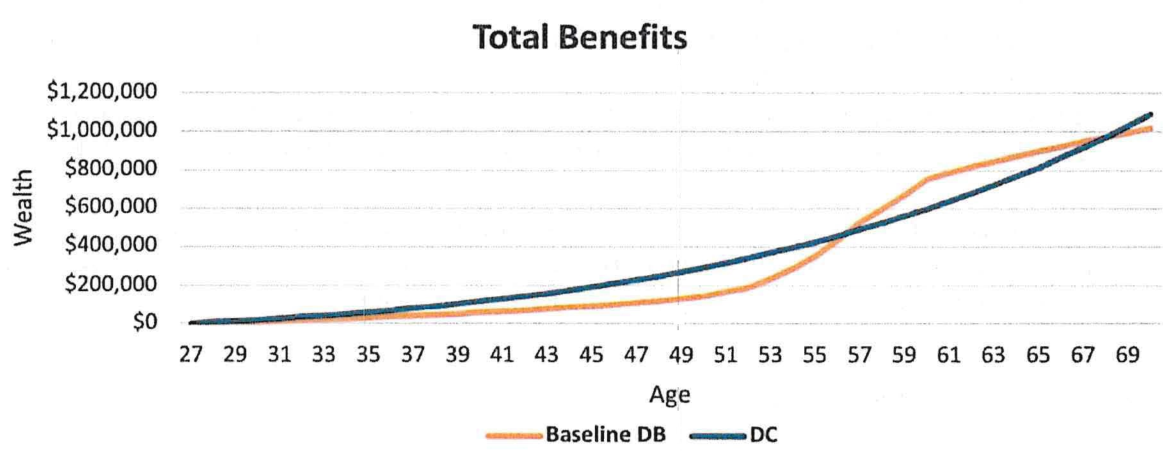
Solving the Prospective Risk Problem

- HB 1040 closes the current structurally underfunded defined benefit plan to all future new hires and instead offers them a new defined contribution retirement plan that our analysis finds meets the high standards of best practices in retirement system design.
- The cost of the current defined benefit is saddled by years of stifled contributions and a high interest rate (historically around 8%) on the pension system's accruing debt.
- The proposed reform would ensure that government employers avoid the accrual of new unfunded liabilities related to future hires.

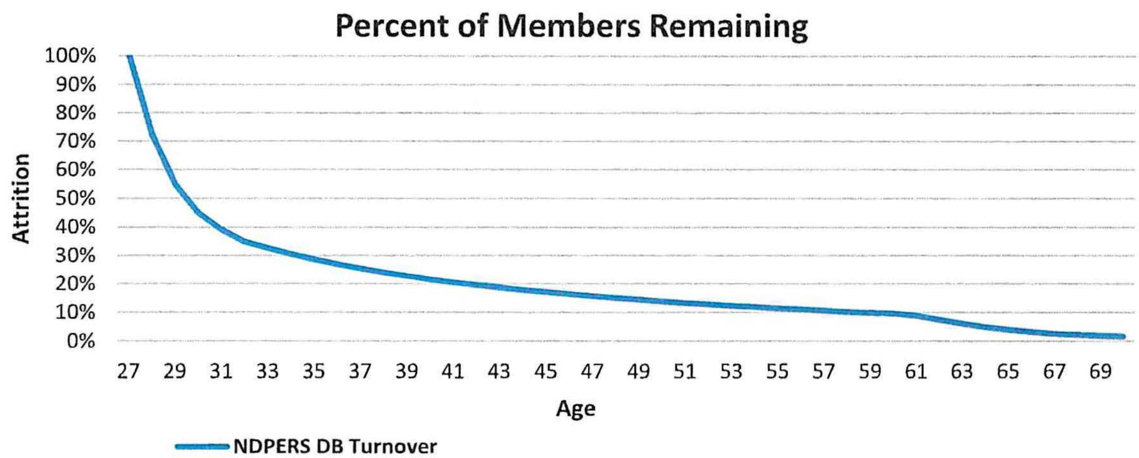
- Our analysis, along with research from the Teachers Insurance and Annuity Association (TIAA), showed the interim committee that for almost any age an employee begins work, the proposed defined contribution plan's benefits would be more generous and advantageous to public workers than the current NDPERS pension plan's benefits.
- This is due to the extremely low multiplier of 1.75% that the NDPERS pension uses for calculating benefits and the high rate of employee turnover in the plan.

Solving the Poor Benefit Problem

- The level of benefits offered in the NDPERS DB is the worst in the country.
- For an average entrant into NDPERS, the proposed defined contribution plan's benefits would be better than the current NDPERS defined benefit plan's benefits.
- Only once a member reaches 29 years of service does the DB benefit become more valuable.
- Only around 9% of new members will reach 29 years of service.
- Due to the high turnover, most members leave NDPERS-covered employment with only a refund of their own pension contributions, plus interest earned. They forfeit all employer contributions made and are not eligible for any pension benefit.
- This chart compares the projected benefit accrual for the current DB plan to the proposed DC plan in HB 1040. The assumptions used in this analysis are the following:
  - Member hired at age 27
  - 6.5% return for both DB and DC plans
  - 1.75% DB multiplier – current NDPERS benefit
  - DC rates are 7% from employee and 7.12% from employer



- This chart shows NDPERS' projected turnover rates. This uses current NDPERS DB turnover experience and assumption and assumes no change from the swap to a DC plan.
    - NDPERS currently has one of the higher turnover rates in the country.
    - 55% of new employees leave before they reach three years of service.



HB 1040 Myths

- NDPERS administrators have said that closing the defined benefit pension plan to new entrants could result in cash flow issues decades from now, and therefore recommends lowering the assumed rate of investment return and discount rate on liabilities to 4.5%, down from the current 6.5% assumption. This logic needlessly inserts billions in previously unrecognized unfunded liabilities and higher costs into their fiscal note calculations.
- There are no legal, financial, or professional requirements or mandates that the discount rate be immediately changed when closing a defined benefit plan or opening a new benefit tier.
- **States like Texas, Oklahoma, Florida, Michigan, and Arizona have all recently enacted plan design and funding policy reforms similar to those in House Bill 1040 and none of these states significantly lowered their assumed investment return or discount rate as part of reform.**
- None of those reforms have created any cash flow issues, and all have seen significant funding progress to their pension systems.
- The risk associated with future negative cash flow exists with or without reform, and if the state wanted to address it, it would not be standard practice nor recommended to immediately lower the discount rate.
- Instead, the state could make up the difference between cash inflows and outflows decades from now, when liabilities are just a fraction of their current amount, through supplemental amortization payments in the event they are actually needed.

Conclusion

- To visualize the thought process behind this bill, think of NDPERS' unfunded liabilities as an oil spill. The two most urgent actions are: (1) to cap the spill and (2) to clean up the oil that's spilled already.
- The transition to the defined contribution plan for future hires caps the spill because no new hire would ever bring the risk of an unfunded liability attached to them in the future.
- The second course of action is to clean up the oil already spilled, which is what the shift to proper actuarial funding reflects.
- Together these actions address the state's growing pension problem.

Contact: Ryan Frost, Senior Policy Analyst, ryan.frost@reason.org

Legislative Council

North Dakota Legislative Council

Prepared by the Legislative Council staff
LC# 23.9515.02000
February 2023

ENGROSSED HOUSE BILL NO. 1040 - SUMMARY

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

CLOSURE OF THE DEFINED BENEFIT PLAN

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

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

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

Employer Contribution

Political Subdivisions

A political subdivision is assessed a 1 percent additional employer contribution effective January 1, 2024.

State

Effective January 1, 2024, the state is assessed a 1 percent additional employer contribution. Effective January 1, 2026, a state employer is required to pay an actuarially determined employer contribution rate that is calculated based on a closed period of 20.5 years. This rate is the amount required to cover both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the plan over 20.5 years. This rate is set in November of each even-numbered year to allow agencies to submit budgets for the upcoming legislative session.

Employee Eligibility

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

DEFINED CONTRIBUTION PLAN

The bill provides that effective January 1, 2025, new state and participating political subdivision hires automatically will be routed to participate in the DC plan under North Dakota Century Code Chapter 54-52.6.

Currently, participation in the DC plan is limited to nonclassified state employees who at the time of hire opt to participate in the DC plan instead of the DB plan.

Contribution

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

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

Employer Contribution for DB Plan

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

Plan Design

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

LEGACY EARNINGS FUND

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

STRATEGIC INVESTMENT AND IMPROVEMENTS FUND

The bill provides a $240 million strategic investment and improvements fund transfer to PERS for the 2023-25 biennium for the purpose of reducing the unfunded liability of the PERS main system plan.

LEGISLATIVE MANAGEMENT STUDY

The bill provides for a 2023-24 Legislative Management interim study of the PERS main system plan, including studying funding options and contributions by political subdivisions.

SECTION-BY-SECTION SUMMARY

North Dakota Century Code

Section 1

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

Section 2

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

Section 3

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

Section 4
Provides for the definition of "deferred member" and amends the definition of "eligible employee" to distinguish between pre-January 2025 employees and post-2024 employees.

Section 5
Provides for post-2024 elected and appointed state officials to join the DC plan and clarifies if an official is a participating member or deferred member in the DB plan at the time of appointment, the official will continue in the DB plan.

Section 6
Provides a temporary employee may elect to participate in the DC plan; and clarifies a temporary employee who is a participating member of the DB plan who becomes a permanent employee will continue in the DB plan.

Section 7
Provides a newly elected county official may elect to participate in the DC plan.

Section 8
Provides political subdivision appointed officials may elect to participate in the DC plan.

Section 9
Provides for closure of the PERS main system DB plan for new hires; clarifies once an employee participates in the DB retirement plan, even if rehired at a later date, remains in the DB plan; provides all new hires are required to participate in the DC retirement plan; and clarifies if a DC retirement plan member joins one of the enumerated DB retirement plans, the member is eligible to participate in that enumerated DB retirement plan.

Section 10
Section 10 is a housekeeping change.

Section 11
Provides effective January 1, 2024, the employer contribution rates for the DB retirement plan are increased 1 percent for state and political subdivision employers and directs PERS to make annual reports to the Employee Benefits Programs Committee.

Section 12
Provides effective January 1, 2026, the state employer contribution rate for the DB retirement plan is changed to an actuarially determined rate. The rate is amortized over 20.5 years and is based on the PERS fund valuation from the previous even-numbered year.

Section 13
Clarifies how funds paid into the PERS retirement plans may be used by PERS.

Section 14
Clarifies Section 9 applies to dual eligible language relating to the higher education alternative plan, Highway Patrol retirement plan, and Teachers' Fund for Retirement plan.

Section 15
Provides the 457 plan may be used by DC members who do not utilize their full 3 percent optional contribution in the DC plan.

Section 16
Defines the terms "governmental unit," "normal retirement age," and "temporary employee" and revises the definitions for the terms "deferred member," "eligible employee," "employee," "employer," and "participating member." These definitions recognize political subdivisions and temporary employees will be participating in the DC plan.

Section 17
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan. This does not affect existing nonclassified state employees already participating in the DC plan.

Section 18
Provides except for those employees who already have participated in the DB retirement plan, all new main system plan hires will be routed to participate in the DC retirement plan.

Section 19
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan.

Section 20
Clarifies PERS shall follow federal guidelines regarding qualified default investment alternatives; directs PERS to provide an investment menu of investment options and, in doing so, meet certain requirements; and requires PERS to use a qualified default investment alternative that includes an in-plan annuity.

Section 21
Directs PERS to select one or more annuity providers to provide annuity options under the DC retirement plan and provides guidelines for PERS to consider in selecting annuity providers to ensure the financial health and stability of the annuity provider.

Section 22
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan.

Section 23
Provides for the employer and employee contribution rates for the DC retirement plan, requiring an employee contribute at least 4 percent of wages and allowing an optional contribution of up to an additional 3 percent. The employer required contribution is 5.26 percent of wages, and matching contributions for any additional contribution made by the employee.

Section 24
Provides a state employer is required to pay an additional contribution based on the actuarially determined employer contribution, less the amount of the employer contribution under Section 23. Additionally, if a state employer uses federal funds to pay any or all of an employee's wages, the employer shall use state funds to pay this additional contribution.

Section 25
Provides a temporary employee may elect to participate in the DC plan.

Section 26
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan.

Section 27
Clarifies distribution under the DC plan may include annuities.

Section 28
Directs PERS or its vendor to educate participating members regarding the DC retirement plan.

Section 29
Clarifies the use of the term "deferred member."

Section 30
Directs PERS to make an annual report to the Employee Benefits Programs Committee on the status of the DC retirement plan.

Section 31
Repeals the section that decreases DB plan contributions upon the funds reaching 100 percent funding.

Special Clauses

Section 32
Provides for a 2023-24 interim study by the Legislative Management.

Section 33

Provides a $240 million strategic investment and improvements fund transfer to PERS for the purpose of reducing the unfunded liability of the PERS main system plan.

Section 34

Clarifies the actuarially determined employer contribution rate applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

Section 35

Provides the legacy fund provisions and the strategic investment and improvements fund transfer become effective July 1, 2023; the closure of the DB retirement plan and routing of new hires into the DC plan portions of the bill become effective January 1, 2025; and the actuarially determined contribution rate portions of the bill become effective January 1, 2026.

23.0280.04001
Title.

Prepared by the Legislative Council staff for
Representative Weisz
February 13, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1040

Page 1, line 1, after the third comma insert "54-52.6-02.2,"

Page 1, line 2, remove "and"

Page 1, line 2, after "54-52.6-22" insert ", and 54-52.6-23"

Page 1, line 12, replace "section" with "sections"

Page 1, line 12, after "54-52-06.5" insert "and 54-52.6-03"

Page 1, line 14, after "funding" insert "and balance transfer when opting to participate in the defined contribution plan"

Page 17, line 24, after "**Election**" insert "**<u>through December 31, 2024</u>**"

Page 22, after line 10, insert:

"**SECTION 19.** Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:

<u>54-52.6-02.2. Election after December 31, 2024 - Additional employer contribution.</u>

<u>1. As used in this section, "eligible employee" means a permanent state employee who on January 1, 2025, is a participating member of the public employees retirement system main system plan under chapter 54-42, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.</u>

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

<u>a. An election under this section made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable.</u>

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

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

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

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

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

Page 32, after line 5, insert:

"**SECTION 32.** Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:

54-52.6-23. Savings clause - Plan modification.

If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules."

Page 32, line 6, replace "Section" with "Sections"

Page 32, line 6, after "54-52-06.5" insert "and 54-52.6-03"

Page 32, line 6, replace "is" with "are"

Page 32, line 22, replace "32" with "34"

Page 32, line 22, replace "33" with "35"

Page 32, line 23, replace "23" with "24"

Page 32, line 23, replace "25" with "26"

Page 32, line 24, replace "31" with "33"

Page 32, line 24, replace "24" with "25"

Page 32, line 24, replace "34" with "36"

Renumber accordingly

Current Funding Policy

- Employer/employee contribution rates are based on fixed rates set by Statute

Plan	Employer Rate	Employee Rate	Total Rate	Total Actuarial Rate
Main System[d]	7.35%	7.00%	14.35%	21.70%
Judges	17.52%	8.00%	25.52%	19.90%
Public Safety With[a]	9.81%	5.50%[b]	15.31%	16.94%
Public Safety Without[a]	7.93%	5.50%	13.43%	14.66%
Highway Patrol[c]	20.20%	13.80%	34.00%	53.15%
RHIC[d]	1.14%	0.00%	1.14%	1.35%
Job Service	0.00%	7.00%	7.00%	NA

[a] *Public Safety with and without prior Main System service.*
[b] *Employee rate for BCI members of Public Safety with prior Main System service is 6.00%.*
[c] *Highway Patrol employer and employee statutory contribution rates are to increase by 0.5 percentage points annually beginning on January 1, 2022, with the last increase occurring January 1, 2025.*
[d] *RHIC rate for members first enrolled on or after January 1, 2020 is made to the Main System for Main System members and to the DC System for DC System members. Main System employer rate of 7.35% is a blend of 7.12% for pre-2020 enrollees and 8.26% for members first enrolled in 2020 or later.*

GRS

23.0280.03003
Title.

Prepared by the Legislative Council staff for Representative Lefor
January 26, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1040

Page 1, line 14, replace "an appropriation" with "for a study"

Page 11, remove lines 15 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 9 with:

"**SECTION 11. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

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

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the

contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 12. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

~~1.~~ ~~Each~~

1. a. As determined by actuarial valuations, each state governmental unit shall contribute to the defined benefit plan an amount ~~equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014~~on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of two hundred forty-six months, beginning January 1, 2026, and continuing through June 30, 2046. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.

   b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.

   c. For a participating member who first enrolls after December 31, 2019, ~~the governmental unit~~a participating political subdivision shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member

not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness."

Page 30, remove lines 29 through 31

Page 31, replace lines 1 through 5 with:

"**SECTION 32. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN.** During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 33. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEMS FUND. The office of management and budget shall transfer $240,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025."

Page 31, line 6, after "54-52-06" insert ", as amended under section 12 of this Act,"

Page 31, line 7, replace "2025" with "2026"

Page 31, line 8, replace "2022" with "2024"

Page 31, line 9, after the second comma insert "11, 32"

Page 31, line 9, replace "31" with "33"

Page 31, line 10, replace ", and" with a semicolon

Page 31, line 10, replace "30" with "10, sections 13 through 23"

Page 31, line 10, replace "section 32" with "sections 25 through 31"

Page 31, line 11, after "2025" insert "; and sections 12, 24, and 34 of this Act become effective January 1, 2026"

Renumber accordingly

Testimony on HB 1040

By

Sparb Collins

Madame Chair, members of the committee, my name is Sparb Collins. I am a retiree in the PERS retirement plan. My concerns with HB 1040 are:

1. The bill will put the PERS fund on an accelerated path to exhausting its assets, thereby creating a large financial debt for the state, unless the state substantially increases its contributions.
2. The bill provides for increased contributions beginning in the 2025-27 biennium of several hundred million dollars a biennium and going forward for biennium's to come. As the past decade demonstrates and even this biennium the state has been unable to pay into the fund the additional contributions to get the plan on track to 100% under the status quo. If the past decade and this biennium are predicative of the future, the state will not be able to pay the needed higher contributions going forward.
3. If the state is not able to pay these higher contributions going forward, this could create a situation where the PERS fund becomes exhausted and unable to pay retirement benefits.
4. While it likely that provisions of state law would require the state to pay the retirement benefits out of the general fund or other funds, it is not automatic and may require a review by the district court and supreme court. Further, while such a review is taking place there could be an interruption in benefits which would be devastating for retirees.
5. If such a review is required who would pay for the expensive legal costs to ensure the retirement benefits are paid?
6. Actuaries have determined the total cost of these additional contributions is in the billions.
7. The above is supported by two actuarial reviews that show the same direction in costs and there is no other quantified or qualified study to contradict these conclusions. However there is intuitive feelings that the actuaries are wrong similar to those of the last decade when additional contributions were not paid contributing to the size of the unfunded liability we have today.

In recognition of the above it seems reasonable that the state should build back the PERS fund first to secure PERS retirement benefits, not destabilize the plan making its future totally contingent on the state paying higher contributions and not start a new program that may create a large financial debt for state until PERS is back to 100%. **Consequently, I believe HB 1040 should not be passed and I would request that you give it a Do Not Pass recommendation.**

Thank you for providing me this opportunity to submit my testimony and please know how important the integrity and funding of this program is for all of us PERS retirees.

AMERICANS FOR PROSPERITY

March 9, 2023

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

Thank you for holding this important hearing and for the opportunity to provide testimony today.

My name is Andrew Nyhus with Americans for Prosperity North Dakota. Americans for Prosperity is the State's largest grassroots organization focused on long-term solutions to our country's biggest problems. As you weigh how to best address the issues in the NDPERS system, I urge you to take the following tenants of reform into consideration.

Across the nation, State and municipal pensions are significantly underfunded and pose a substantial liability to taxpayers. These unfunded liabilities arise from unreasonably inflated anticipated returns on investment, underfunding from employees and employers, and unaffordable promises made to employees.

At current, there is a $1.8 billion unfunded liability in the North Dakota Public Employees Retirement System. This is a common problem for states across this country, but North Dakota stands out among them for the severity of our shortfall. The solution presented in HB 1040 will gradually resolve the issue and prevent the creation of new unfunded liabilities. It is a prudent resolution similar to successful reforms implemented in other states.

Transitioning to a defined contribution plan provides several benefits. First and foremost, predictability. Presently, it is difficult to model the solvency of the fund with any accuracy. HB 1040 will give taxpayers a predictable expenditure that does not create new debts. Meanwhile, employees will gain confidence in their benefits for the long haul when they need not face the uncertainty and political risk of legislated changes to their benefits when the certainty of another deficit occurs.

Every year of inaction adds more unfunded liabilities to the defined benefit plan. This unfairly transfers debt, and the cost to service it, to future taxpayers. With their hands tied, future generations will not be free to determine how to best direct the taxes they pay. Instead, this generation will have obligated the next to pay a debt they did not incur—and that with interest.

Left unchanged, the growing unfunded liability will need to be paid annually out of the State budget. Those appropriations could be three to four times what it costs today. For taxpayers, that is like adding a new State agency that provides no services. HB 1040 fixes this across a decades-long outlay.

To address the challenges certain to come from the *status quo*, now is the time to act and pass HB 1040. This legislation is a right-sized and responsible solution to an issue that will only grow with time and limit our options in the future. There is a window to fix it now and set North Dakota on a sustainable fiscal trajectory for generations to come. We respectfully ask for your support of HB 1040.

Thank you again for holding this hearing on a serious and timely subject. I am grateful for your consideration and the opportunity to testify today.

Andrew Nyhus

Americans for Prosperity North Dakota

NORTH DAKOTA UNIVERSITY SYSTEM

ACCESS. INNOVATION. EXCELLENCE.

HB1040

Senate State and Local Government Committee
March 9, 2023

David Krebsbach, Vice Chancellor of Administrative Affairs and CFO, NDUS
701.328.4116 | david.krebsbach@ndus.edu

Chair Roers and members of the Senate State and Local Government Committee. My name is David Krebsbach, and I serve as the Vice Chancellor of Administrative Affairs & Chief Financial Officer for the North Dakota University System (NDUS). I am providing testimony today on behalf of the NDUS and its eleven institutions to provide neutral testimony related to HB1040.

HB1040 closes the NDPERS Defined Benefit plan (DB) to new members effective January 1, 2025. Existing DB participants will remain in the plan; however, the NDUS and its 11 institutions will be obligated to pay an additional contribution, the Actuarily Determined Contribution (ADEC), in addition to the regular retirement contributions for about 20 years. HB1040 does not include a state appropriation with which to make these ADEC payments or the 1% required additional employer contribution.

NDUS has approximately 2,400 employees participating in the DB Plan. These individuals work in the Technical & Paraprofessional, Office Support, Crafts/Trades and Services broadband classifications. The estimated minimum cost of additional 1% required employer contribution for these employees is $1.6 million for the biennium. 2023-2025 per institution amounts are as follows:

	PERS Defined Benefit Plan Closure HB1040		
	HB1040 - Fiscal Note 2023-25 - NDUS Cost 2023-25 Biennium		
NDUS Entity	General Fund	Special Fund	Total
NDUSO	$ 40,267	$ 15,963	$ 56,230
BSC	32,748	46,664	79,412
LRSC	15,155	19,992	35,148
WSC	8,950	11,872	20,822
UND	169,753	495,691	665,444
NDSU	103,203	315,261	418,464
NDSCS	40,888	47,136	88,024
DSU	16,223	18,709	34,932
MaSU	21,451	33,377	54,828
MiSU	28,913	42,462	71,374
VCSU	17,140	17,035	34,175
DCB	10,027	8,878	18,905
Forest Service	25,844	834	26,677
Total	**$ 530,562**	**$ 1,073,874**	**$ 1,604,435**

In the 2025-2027 biennium, the 40.1% employer increase for the ADEC takes effect January 1, 2026. It is estimated NDUS will incur approximately $64.3 million in additional expenditures. The 2025-2027 per institution amounts are as follows:

	PERS Defined Benefit Plan Closure HB1040		
	HB1040 - Fiscal Note - NDUS Cost in 2025-27 Biennium		
NDUS Entity	General Fund	Special Fund	Total
NDUSO	$ 1,614,710	$ 640,120	$ 2,254,830
BSC	1,313,180	1,871,222	3,184,402
LRSC	607,719	801,698	1,409,417
WSC	358,898	476,058	834,956
UND	6,807,102	19,877,219	26,684,321
NDSU	4,138,427	12,641,976	16,780,403
NDSCS	1,639,605	1,890,172	3,529,777
DSU	650,543	750,238	1,400,781
MaSU	860,186	1,338,405	2,198,591
MiSU	1,159,409	1,702,706	2,862,115
VCSU	687,322	683,099	1,370,421
DCB	402,096	355,991	758,087
Forest Service	1,036,290	33,429	1,069,719
Total	**$ 21,275,487**	**$ 43,062,333**	**$ 64,337,820**

The NDUS cannot absorb such a significant expense without a state appropriation that covers the total cost of this change. The alternative would be to use special funding sources, which for higher education are derived largely from tuition and fees for auxiliary services paid by students & their families. Raising the cost of education when families are already struggling to cover increasing prices of fuel, housing, and food would not benefit anyone and may lead to decreased enrollment in post-secondary education. This could in turn negatively impact the number of qualified employees in the ND workforce at a time when employees are desperately needed.

If HB1040 is moved forward, the NDUS respectfully requests the addition of a general fund appropriation to cover the $1.6 million in increased costs of the 1% required employer contribution increase in the 2023-2025 biennium. NDUS also respectfully requests the Legislature provide intent to fund the general and special fund portions of the ADEC in the 2025-2027 biennium and beyond.

The NDUS would gladly provide additional information to the committee if needed. If committee members have questions, please let me know by email (david.krebsbach@ndus.edu) or call me at 701-328-4116.

Great Public Schools *Great Public Service*

Testimony before the Senate State and Local Government Committee
In opposition to House Bill 1040
Nick Archuleta, North Dakota United
March 9, 2023

Chairwoman Roers and members of the Committee, for the record my name is Nick Archuleta, and I am the president of North Dakota United. I rise today on behalf of our 11,500 members to urge a ***do not pass*** recommendation on HB 1040.

Madam Chair, PERS Executive Director Scott Miller and former ND OMB Director Pam Sharp, have already shared with and the Committee what it will cost to close the main PERS defined benefit plan to new employees on January 1, 2025. I am not going to rehash what they said because they understand the numbers and methodologies used to arrive at those numbers certainly better than me, and probably better than most people in this room. That said, $5.547B over the next 20 years is an incredible sum to close a plan that can be saved for far less.

What I will talk about today, though, are our concerns associated with the closure of the PERS Defined Benefit Retirement Plan:

- $5.5B. To the best of my knowledge, ND has not spent $5.5B on any one item in its history. For perspective, the Fargo Diversion project is expected to cost almost $2B less than it will cost to close the PERS DB plan. And before we attack that number, we should note that it is the only number arrived at as a result of an actuarial analysis of this plan. The Retirement Committee retained a reputable actuarial firm, Milliman, but for some reason, never asked them to do an analysis of the plan. Furthermore, according to Milliman, DC plans are, "an inefficient use of taxpayer money."

- Closing the defined benefit plan will have a negative impact on the ability of the state and political subdivisions to recruit and retain the resolute and high-quality personnel necessary to deliver the vital services that North Dakota's citizens deserve and depend on every day. On average, according to the Hay Group study, public employees are paid anywhere from 7 to 12 percent less than their similarly trained and experienced counterparts in the private sector. The defined benefit retirement plan and the PERS healthcare plan are key factors in attracting good people to public service.

- This legislature cannot bind future legislatures to pay the exorbitant cost for shutting down this plan. We have been tethered to a commodities-based economy since before statehood and we have seen oil and agriculture in very good times as well as in very bad times. What will happen when future legislatures cannot or will not appropriate the funds necessary to keep PERS solvent? We fear that PERS will run out of money and the state will not be able to honor its commitments to current retirees and those currently in the plan.

- The Defined Contribution plan that will be the only choice afforded future state employees is not popular now. According to a recent Human Resource Management Service (HRMS), only 3% percent of state employee survey respondents expressed their preference of a defined contribution plan as opposed to a defined benefit plan. Forty two percent STRONGLY prefer a DB plan. And that was across all age groups, dispelling the notion that young public employees prefer a DC plan.
- The only thing guaranteed about a defined contribution plan is the amount of money that goes into the plan. Less certain is what a retiree gets out, as that depends on factors beyond the control of the participant as we witnessed in real time during the recession of 2008-2009, and in every market downturn since then.

Mr. Chairman and members of the Committee, ND is not the first state to attempt to close down their defined benefit plan. In just over a decade after closing the DB plan for teachers in West Virginia, the closed retirement system was paying out more in benefits than it was bringing in in contributions, which drained the fund and hastened insolvency. Furthermore, the defined contribution plan was inadequate to help teachers build sufficient retirement reserves.

In Alaska, they closed their DB plan and have seen an exodus of teachers from the state, as well as a public jobs vacancy rate of 25%. That has caused a ripple effect throughout Alaska's state economy. Alaska is considering re-opening their DB plan. It is not hard to think of Alaska as North Dakota's ghost of Christmas Future. Alaska serves as a cautionary tales that North Dakota can ill afford to ignore.

Our members believe that the narrow charge given the Retirement Committee-to develop a plan to close the PERS DB plan-prevented the Committee from exploring other, less expensive solutions to preserve a plan that public employees prefer and is an efficient use of taxpayer money. While we appreciate the hard work of the Retirement Committee and the opportunity to partake in the rich discussions of the Committee, ND United cannot support the conclusions of the Committee.

Chairwoman Roers and members of the committee, for these reasons and the reasons outlined in the testimonies of those who spoke before me, we urge a ***do not pass*** on HB 1040.

I appreciate the opportunity to testify before you today. This concludes my testimony and I am happy to answer any questions.

Jeff Kasper Testimony to the North Dakota Legislature

Chair xxx and members of the xx Committee,

For the record my name is Jeff Kasper, I am the Business Manager for the Alaska Public Employees Associations headquartered in Juneau, Alaska. Prior to this role I served 17 years in various roles with the Alaska Dept. of Health and Social Services and the Dept. of Fish and Game. I grew up in Minnesota and I am a veteran. Thank you for the opportunity to testify today.

I am appearing before the Committee today to urge you to be cautious in moving towards eliminating the North Dakota defined benefit pension program. The Alaska Legislature made the decision to abandon a pension program for new employees in 2005, and since then, we have seen a catastrophic drop off in the ability of the state to attract and retain public employees. Seventeen years later we lack the ability to reliably provide even the most basic public services to our citizens. Currently, nearly 1 in 4 jobs across all state agencies are unfilled and recruitments are yielding few to any qualified candidates for critical jobs.

For many years, the employment pattern among Alaska public employees was to work a full 30-year career and retire. Wages for public employees have not been competitive with the private sector, but the promise of a secure and reliable retirement was enough to balance the equation and long-0term employment was typical. Since Alaska ended its pension program, opting instead for 401(K) style plan, new employees no longer have an incentive to work a full career in public service. This has led to a new employment pattern where employees come to work for the state, are trained, stay for five years, and then cash out their 401(k) and move to the private sector to higher paid jobs, or out migrate to work in public service in other states like Washington, Idaho, or Montana. All of which offer defined benefit pensions. Alaska's population is declining which has made it difficult for outside investors to keep our economy moving forward.

This is the case across all job classes including state troopers, heavy equipment operators, plow drivers, public health nurses, road engineers and information technology professionals, and oil and gas experts just to name a few. This phenomenon has been testified to by everyone from the Commissioner of the Alaska Department of Public Safety, the President of the University of Alaska, City Managers, Mayors, and police and fire chiefs across the state.

From a managerial standpoint eliminating pensions was a disaster. As a citizen the impacts are even more startling. What happens when public agencies consistently run between a 15 and 40 percent vacancy rate year to year?

Well, as can be expected the services that people rely on fall apart. Currently the Alaska Division of Public Assistance is collapsing. Alaskan's applying for emergency SNAP benefits are faced with a 6-month wait due to the agency being about half staffed. There have been recent news reports that elders in rural areas are being hospitalized with malnutrition because they have not received their benefits. Needy Alaskans are literally starving.

Thousands of families are not getting enough food to eat, and all of this because the department can't find and keep employees. Federal lawsuits have been filed and the same Department is facing a Medicaid deadline that if not met will result in a $100,000 fine for every day that the work is delinquent.

Basic needs such as snowplowing have been strained by lack of public employees. Governments have struggled finding qualified plow drivers and mechanics to keep the fleet operating. Alaska's largest city, Anchorage, was essentially paralyzed by the inability to clear snow following snow storms this winter. Public schools were closed for 7 days and commerce came to a virtual standstill for nearly 2 weeks. The amount of snow was out of the ordinary, but the lack of snowplows was.

Police staffing is stretched paper thin as well. According to the FBI, in 2020 65 percent of Alaska police officers were assaulted in the course of doing their jobs, compared to the national average of 11.5 percent, and the North Dakota average of 16.9 percent. The Anchorage Police Department and Alaska State Troopers leadership attributed this to the high vacancy rate, and the need to send out officers to calls without backup because we simply don't have the officers.

The abject failure of the state to recruit and retain public servants affects each and every Alaska citizen, business and family. When Alaska got rid of pensions we we're the guinea pig for the rest of the country, and our experience is a 17-year study in what not to do. For the sake of your state please do not make the same mistake we did.

Thank you

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TESTIMONY ON HOUSE BILL 1040
Senate State & Local Government Committee
March 9th, 2023

Maureen Storstad, Finance and Administrative Services Director
City of Grand Forks, ND

Chairman Roers and members of the committee, this testimony is written on behalf of Tangee Bouvette, Human Resources Director and myself, Maureen Storstad, Finance and Administrative Services Director for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition to this legislation.

The NDPERS retirement system is an excellent defined benefit pension plan and it is our top retention and recruitment tool for the City of Grand Forks**.**

The City of Grand Forks, in general, has supported previous efforts to support the NDPERS plan to bring this plan to a healthier funding percentage level, and we would continue to support the NDPERS plan if the State were to consider keeping this plan open to new employees. The City of Grand Forks has supported past legislation to incrementally increase contribution rates over the last 12+ years as the City has been able to manage these incremental increases through budget planning.

Conversely, the City of Grand Forks is opposed to House Bill 1040, which would close the NDPERS main plan to new employees. As stated previously, it is the most important recruitment and retention tool that we have as a municipality.

These type of pension plans need to be viewed with a long-term perspective. As long as the plan would remain open, there is not a need to be fully funded today, but to show a plan that reflects a positive trajectory toward becoming fully funded. I believe the State still has this ability with the existing NDPERS main plan as long as it is not closed to new employees.

The narrative that exists to support this bill is that this younger generation of employee doesn't care about defined benefit pensions and that employees just want a benefit that is portable as jobs are seen as short-term ventures. I can tell you that has not been the experience with City of Grand Forks employees. City employees do care about defined benefit pension plans. The City's typical job applicants are individuals that are looking for long-term career paths that can provide financial stability along with work-life integration. Providing for a secure retirement is a key component of a sustainable career for employees providing essential community services.

In reviewing the information presented by Milliman at the July 21st, 2022 interim legislative committee meeting, a baseline was presented along with a revised projection at the newly adopted, more conservative, 6.5% assumed rate of return. This was used in comparison and showed the impact of closing the plan to new employees. It is very expensive to close a defined benefit plan as new employees do not contribute toward funding of the plan as the plan was intended. Therefore, the numbers show, based on performance numbers at the time, the following:

- Keep NDPERS Main Pension Plan open at 6.5% assumed earnings rate:
    - 74% funded after 30 years (basically holds its own, but funding percentage does not improve) (This is with no additional annual cash infusion)
    - 87% funded after 30 years with a positive trajectory (with $25M additional annual cash infusion)
- Close the NDPERS Main Pension Plan to new employees and same 6.5% assumed earning rate:
    - 43% funded after 30 years (with $25M additional annual cash infusion)

Based on the data presented and summarized above, it is much more costly to close the NDPERS Main Pension Plan than it would be to keep the plan open to new employees and get the plan on a healthier trajectory toward becoming fully funded.

The City of Grand Forks opposes the closure of the NDPERS Main Pension Plan. We would support making incremental contribution changes to the NDPERS plan and monitoring funding every two years, in order to get this plan on a positive trajectory toward healthier funding. It is for the reasons stated above that we oppose the passage of House Bill 1040 as this bill is not in the best interests of the City of Grand Forks. Thank you for your time and consideration. We respectfully ask for a DO NOT PASS on House Bill 1040.

AARP North Dakota

March 9, 2023
House Bill 1040
Senate State and Local Government Committee
Josh Askvig, AARP North Dakota

Chair Roers and members of the committee,

I'm Josh Askvig, State Director for AARP North Dakota. On behalf of our nearly 38 million members nationwide and our 83,000 members in North Dakota, we're here today to offer testimony in opposition to House Bill 1040.

As you may know, AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families. Financial and health security are key components of our advocacy agenda. AARP strongly believes that all individuals have the right to be self-reliant and live with dignity in retirement. We further believe that Americans of all ages are faced with a crisis where the goal of achieving an adequate and secure retirement is becoming increasingly difficult.

Following the Great Recession, there was widespread discussion and consideration around converting from traditional defined benefit plans to defined contribution plans. Yet, nearly every state retained a traditional pension as a component of the primary retirement benefit for most public employees. A review of those discussions indicates the **following leading cost related reasons for the very limited number of defined contribution plan conversions in the public sector. We would urge the state to exercise similar caution because modifying retirement plan designs can have unintended outcomes:**

- ***Does not reduce legacy plan liabilities.*** Closing off the pension plan to new employees does not resolve any existing unfunded obligations. In fact, it diverts contributions that would have otherwise gone into the plan and earned investment income, requires higher contributions as a percentage of payroll for the legacy plan, and often necessitates accelerated near-term additional payments to eliminate the unfunded pension liability. (Enduring Challenges: Examining the Experiences of States that Closed Pension Plans, NIRS, August 2019)

- ***Increases benefit costs.*** For any given level of retirement income, defined contribution plans cost significantly more than a traditional pension. Pension plans have economies of scale that cost less to administer. Their pooled assets can achieve higher investment returns due to professional management, more diversified portfolios, longer time-horizons and lower fees. Longevity risk is also pooled, which is inherently less expensive than what individuals would need to accumulate to ensure they do not outlive their savings. (Still a Better Bang for the Buck, National Institute on Retirement Security, December 2014). Furthermore, two plans are more costly than one - higher administrative costs of a new defined contribution plan would be in addition to the traditional pension that must still be maintained for current workers and retirees. (Look Before you Leap: The Unintended Consequences of Pension Freezes, NIRS, October 2008)

- ***Creates workforce challenges and expenses.*** Managing employee turnover promotes the efficient delivery of public services, allowing taxpayers to maximize the training and experience invested in public employees and an orderly progression of personnel. Pension plans are an important workforce management tool to meet this objective. State and local governments that closed their traditional pensions saw increased turnover, workforce challenges, and training expenses. (Retirement Reform Lessons: The Experience of Palm Beach Public Safety Pensions, NIRS, February 2018; The Cost of Teacher Turnover in Alaska, Center for Alaska Education Policy Research, March 2017)

Beyond the costs of switching from a traditional pension to a defined contribution plan, there are additional policy considerations when transitioning pension plans for new public employees in North Dakota.

- ***Traditional pensions are economic drivers for Main Street America.*** Economic gains attributable to pensions in the U.S. are substantial. Their long-time horizon enables monthly benefits to be distributed on time and in full, even during market shocks and economic declines, to retirees in virtually every community across the country. In North Dakota, retiree spending of these benefits in 2018 generated $805.8 million in total economic output, supporting 4,610 jobs across the state. Pension spending also added $110.7 million to government coffers at the federal, state and local levels. (AARP-In-The-States-Snapshot-ND-Public-Employee-Retirement-System 2021). Additionally, North Dakota's rural and small towns benefit from public defined benefit pension plans as most retirees remain in their communities and contribute to the economic stability of the region as their income is both stable and predictable. (Fortifying Main Street: The Economic Benefit of Public Pension Dollars in Small Towns and Rural America, Linea Solutions and NIRS, March 2020).

- ***Defined contribution plans can increase retirement insecurity and reliance on social safety nets***. Moving away from defined benefit plans means that individuals must face the risk of poor investment returns, the risk that they might outlive their assets, and the risk that inflation will erode the value of their income in retirement. **(**Defined Contribution Plans and the Public Sector: An Update, Center for State and Local

Government Excellence, April 2014). Defined contribution plans do not provide predictable benefits sufficiently to ensure some retirees will not need access to other government assistance programs (Medicaid, TANF, etc.). Defined contribution plan participants experience different retirement plan success depending on such factors as their level of contribution and investment knowledge and their understanding and appetite for risk.

- ***Most Americans support pensions to retain public employees and compensate for lower pay and higher risks.*** Most Americans believe providing pensions is a good way to recruit and retain public employees. They additionally appreciate that public workers help finance the cost of these benefits and that pensions compensate for comparatively lower pay and higher risk in many public sector jobs. (Americans' Views of State and Local Employee Retirement Plans, NIRS, March 2021).

Thank you.

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TESTIMONY ON HOUSE BILL 1040
State and Local Government Committee
March 9, 2023

Jamison Fuqua, Lead Fleet Maintenance Mechanic
City of Grand Forks, ND

Madam Chairperson and members of the committee, My name is Jamison Fuqua and I am the Lead Fleet Maintenance Mechanic for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express my opposition to this legislation.

When I was looking at this position with the City of Grand Forks, one of the main attractions was the NDPERS plan. As a newer employee with the City of Grand Forks I am planning long term for my career and the pension plan with the City was second to none.

I could have taken a job with better pay, but the long-term stability that I get with the NDPERS plan with the city was one of the main selling points to taking the job.

I understand that there are costs at the state and local level associated with this plan, but please understand that this plan does impact the ability to find and retain employees.

I stand in opposition to this legislation.

Thank you.

North Dakota Legislative Council

Prepared by the Legislative Council staff
LC# 23.9515.03000
March 2023

REENGROSSED HOUSE BILL NO. 1040 - SUMMARY

This memorandum summarizes House Bill No. 1040 (2023) as reengrossed. In general, the bill provides for closure of the Public Employees Retirement System (PERS) main system defined benefit (DB) plan for new hires; routing of new hires into a defined contribution (DC) plan; an opportunity and incentive for recent hires to elect to participate in the DC plan; a strategic investment and improvements fund transfer to PERS to pay down the unfunded liability on the main system DB plan; funding from the legacy earnings fund to pay down the unfunded liability on the main system DB plan and to cover administrative services; and a Legislative Management study.

CLOSURE OF THE DEFINED BENEFIT PLAN

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

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

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

Employer Contribution

Political Subdivisions

A political subdivision is assessed a 1 percent additional employer contribution effective January 1, 2024.

State

Effective January 1, 2024, the state is assessed a 1 percent additional employer contribution. Effective January 1, 2026, a state employer is required to pay an actuarially determined employer contribution rate that is calculated based on a closed period of 20.5 years. This rate is the amount required to cover both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the plan over 20.5 years. This rate is set in November of each even-numbered year to allow agencies to submit budgets for the upcoming legislative session.

Employee Eligibility

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

DEFINED CONTRIBUTION PLAN

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

Contribution

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

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

Employer Contribution for DB Plan

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

Recent Hires

The bill provides state employees hired in the previous 5 years a one-time opportunity to opt to participate in the DC plan. The employer of a state employee who elects to participate in the DC plan under this provision is directed to pay an additional contribution of $3,333 at the completion of each year the employee remains employed by the state, for a maximum of 3 years.

Plan Design

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

LEGACY EARNINGS FUND

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

STRATEGIC INVESTMENT AND IMPROVEMENTS FUND

The bill provides a $240 million strategic investment and improvements fund transfer to PERS for the 2023-25 biennium for the purpose of reducing the unfunded liability of the PERS main system plan.

LEGISLATIVE MANAGEMENT STUDY

The bill provides for a 2023-24 Legislative Management interim study of the PERS main system plan, including studying funding options and contributions by political subdivisions.

SECTION-BY-SECTION SUMMARY

North Dakota Century Code

Section 1

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

Section 2

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

Section 3

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

Section 4

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

Section 5

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

Section 6

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

Section 7

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

Section 8

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

Section 9

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

Section 10

Section 10 is a housekeeping change.

Section 11

Provides effective January 1, 2024, the employer contribution rates for the DB retirement plan are increased 1 percent for state and political subdivision employers and directs PERS to make annual reports to the Employee Benefits Programs Committee.

Section 12

Provides effective January 1, 2026, the state employer contribution rate for the DB retirement plan is changed to an actuarially determined rate. The rate is amortized over 20.5 years and is based on the PERS fund valuation from the previous even-numbered year.

Section 13

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

Section 14

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

Section 15

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

Section 16

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

Section 17

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

Section 18

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

Section 19

Provides a one-time opportunity for recent hires to opt to participate in the DC plan and provides an additional employer contribution for each year the employee remains employed by the state, for up to 3 years.

Section 20

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

Section 21

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

Section 22

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

Section 23

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

Section 24

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

Section 25

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

Section 26

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

Section 27

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

Section 28

Clarifies distribution under the DC plan may include annuities.

Section 29

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

Section 30

Clarifies the use of the term "deferred member."

Section 31

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

Section 32

Provides a savings clause stating if the PERS Board determines any portion of the DC Plan chapter does not comply with federal law, the board shall adopt necessary terminology, subject to approval by the Employee Benefits Programs Committee. This section mirrors a similar section in Chapter 54-52.

Section 33

Repeals the section that decreases DB plan contributions upon the funds reaching 100 percent funding and the section in the DC plan chapter which allows for the transfer of funds to the DC plan under an obsolete transfer provision.

Special Clauses

Section 34

Provides for a 2023-24 interim study by the Legislative Management.

Section 35

Provides a $240 million strategic investment and improvements fund transfer to PERS for the purpose of reducing the unfunded liability of the PERS main system plan.

Section 36

Clarifies the actuarially determined employer contribution rate applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

Section 37

Provides the legacy fund provisions and the strategic investment and improvements fund transfer become effective July 1, 2023; the closure of the DB retirement plan, routing of new hires into the DC plan, and the one-time opportunity for recent hires to opt into the DC plan portions of the bill become effective January 1, 2025; and the actuarially determined contribution rate portions of the bill become effective January 1, 2026.

ND Senate State & Local Government Committee
March 9, 2023

Available to answer questions regarding best practices DC Plan.

Zeny Agullana, Sr. Director, State Government Relations
TIAA

North Dakota Senate
State and Local Government Committee
Chairman Kristin Roers

By: Tom Ross
Mayor, City of Minot
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HB 1040

Chairman Roers and members of the House Government and Veterans Affairs Committee thank you for allowing me to provide testimony today on behalf of Tom Ross and Lisa Jundt, the City Mayor and Human Resources Director, respectively, concerning HB 1040.

In 2014 the Minot City Council voted to close the existing defined benefit pension plan in favor of offering a defined contribution plan to future employees. This decision was made not only for financial reasons, but with the premise of offering a more conventional retirement plan similar to that of the private sector. By doing this, the City felt it would be able to improve the attraction and retention of potential employees. That was not the case.

In the time period 2014-2018, with employees hired under a defined contribution retirement plan, the City of Minot continued to see significant turnover. Turnover is very challenging, especially in the public safety occupations, as those positions have significant training requirements and employees are sought after in the private sector due to this completed training (CDL, safety positions)

At the beginning of 2018 the Human Resources Department conducted a longevity assessment of the police and fire departments as well as the Engineering Department. That assessment revealed very disturbing results with regard to longevity and experience levels in each of those departments. The longevity /experience assessment indicated the following:

- Police Department - 35 of 81 sworn officers, or 43.2% of the overall police force, had 5 years or less experience.
- Fire Department – 34 of 60 fire control personnel, or 56.7% of the control force, had 5 years or less experience.

This information was presented to the Minot City Council during a workshop addressing workforce issues in April of 2018. At that time, additional information was also provided in the form of employee comments compiled from exit interviews, employee evaluations and an employee satisfaction survey. A majority of the employee comments cited the lack of a comparable defined benefit plan as the main reason for unsuccessful recruitment efforts and continued retention issues. Based on the presented information, the Minot City Council asked that research be done to restructure many benefits including the retirement benefit, which they agreed should be structured like a more conventional government pension. The City of Minot had the option as a political subdivision to participate in the North Dakota Public Employees Retirement System (NDPERS) defined benefit (DB) plan. As such, the City Council decided it was the most logical and prudent retirement plan to move to. So the City began participation in the NDPERS-DB plan as of January 1, 2019.

Since the implementation of the NDPERS DB plan in 2019, the City has been able to reduce the rate of employee turnover. The turnover rate in the city went from 12.56% in 2018 to 7.6%, 8.27% and 9.95% in 2019, 2020 and 2021 respectively. This has resulted in a decrease in the number of public safety employees with less than 5 years of experience which is currently at 37% for the Police Department and 47% for the Fire Department.

Government entities are not as nimble to respond to outside economic forces and are unable to adjust rates of pay and benefits on the fly to respond to demands in the workforce. What government entities are able to provide is a higher level of stability both in job security and pay and benefits. A defined benefit pension plan is an integral part of that equation. Removing this portion of the equation will result in the necessity to improve other pay/benefits to remain competitive in the marketplace. This will come at a cost that is very difficult to quantify at this time.

Minot as well as other North Dakota political subdivisions provide important and essential services to its citizens, especially with regard to the public safety. We believe HB 1040 will further hinder employment efforts for the City of Minot and other political subdivisions equally by eroding comparable and expected public sector retirement benefits. For these reasons we respectfully ask for a do not pass recommendation. Thank you for your time and consideration in this matter.

Chairperson and members of the committee:

Please oppose closing the NDPERS retirement plan to new hires and do the right thing by keeping the promises made to public employees.

I have been a state employee for almost four years, and a number of those years were as a non-FTE (full-time equivalent) temporary position that did not have access to the defined-benefit plan. I chose to work for the state because I wanted to make a difference in the lives of North Dakotans, but I was only able to justify remaining at the state because of the transition to an FTE position that let me gain the full benefit package. As a one-person household, contributing to the defined-contribution plan was not feasible for me and frankly was not a guarantee of a secure retirement. The defined-benefit plan gives me long term stability, without having to worry about retirement down the road. This plan played a large role when thinking about my future and career goals and will likely be a reason I continue working for the state for years to come.

North Dakota Public Employees Retirement System's (NDPERS) defined-benefit pension plan is a valuable recruiting tool for North Dakota job growth and provides stable retirement savings for our public workers. We must consider the future of our state and its employees. House Bill 1040 would close the defined-benefit pension plan and cost North Dakota taxpayers $5.5 billion. This is a fiscally irresponsible choice, and takes the retirement choice away from state employees, leaving them with only the defined contribution plan.

I spent the time working for the state without these benefits, and while I loved my job and the difference I was able to make, the lack of stability caused me to begin to turn my search outward for employment opportunities. Thankfully, I was able to find an FTE position that allowed me to continue serving the citizens of North Dakota while also ensuring my own financial and career success. I strongly believe that without the full NDPERS retirement plan in its current form we will neither attract nor retain new talent in any state agency. I urge a "do not pass" vote.

Sincerely,

Samantha K. Harrison, MPH, CPH, NREMT

Testimony in Opposition TO HB 1040
Senate State and Local Government

Good morning Chairman Roers and members of the committee. My name is Sharon Schiermeister. I am a retired state employee and I am opposed to closing the PERS defined benefit (DB) retirement plan. Closing the DB plan could put my future retirement payments in jeopardy. During my testimony in front of the House GVA committee, I was told by the chairman that this bill would have no impact on retirees. I do not agree.

The Interim Retirement Committee recognized the importance of providing funding to ensure that all retirement benefits are paid if the DB plan is closed. This will require the state to substantially increase its contributions to the plan for the next 20 years in addition to hundreds of millions of dollars being transferred from the legacy earnings fund. What guarantee is there that future legislative bodies will make these payments?

My concern is based on how past legislative assemblies handled the funding for the DB plan, which I saw firsthand during my career at NDPERS. Included with my testimony is background information on the funding challenges the plan experienced as a result of the financial crisis in 2008-09, the proposed recovery plan, and actions taken by the Legislature from 2011 - 2021. The history shows 6 Legislative Assemblies were unwilling to fully fund the contribution increases proposed as part of the 4-year shared recovery plan. Three years of contribution increases were passed, but the last 1% employer and employee contribution increase never passed. There were several sessions where the requested contribution increases were given a favorable recommendation from the Legislative Employee Benefits Committee, included in the Governor's budget, and passed out of one chamber, but still failed. Even in years with a budget surplus, the additional contributions were not funded. Each time these requests were made, they were accompanied by an actuarial study showing the impact on the unfunded liability if these additional contributions were not made and yet they repeatedly did not get funded. This lack of funding contributed to the size of the unfunded liability we have today. Clearly, funding the DB plan has not been a priority.

I also find it interesting that HB 1040, as originally proposed, increased the state contribution effective 1/1/2025 but was amended to delay that increase to 1/1/2026. The fact that changes are already being made to limit the funding going into the plan clearly demonstrate that my concern is valid. If decisions like this keep getting made that delay funding for the plan, the retirement fund will be exhausted and unable to pay retirement benefits. And then what? Where will the money come from to pay future retirement benefits?

I would feel much more reassured if the Legislature would first address adequately funding the DB plan to restore it to 100% funded status before considering closing the DB plan and putting it on a fast path to insolvency. Therefore, I am respectfully requesting a DO NOT PASS recommendation on HB 1040.

PERS Recovery Plan

In the 2008/2009 fiscal year the financial market had a major correction that was preceded by the tech market collapse in 2001-2002. However, the most significant effect occurred in 2008/2009 when the PERS plan lost about 24.5%. The financial consultant to the State Investment Board, which manages the PERS assets, reported that out of 224 years of US stock performance only 4 years were worse than the returns in 2008. What the plan experienced was truly a unique and significant event. As a result of this dramatic downturn in the financial markets, the long term funded status of PERS was affected and projections showed the plan could become insolvent in approximately 2040. After a significant amount of study, a proposal was brought forward to increase the contributions by 8% over the period from January 2012 to January 2015 which was projected to close this funding deficit. It became known as the PERS 4-year recovery plan and was based upon the concept that the recovery should be shared between the employer and employee. As proposed, the State would pay approximately 25%, the political subdivision employers would pay 25% and the employees would pay the remaining 50%. Essentially, this was a 50/50 split between employers and employees. It was proposed to be spread over 4 years to reduce the effect of the increase in any given year on either party. The Teachers Fund For Retirement (TFFR) also had a similar recovery plan. This proposal came together in SB 2108 that was considered during the 2011 session. This proposal was intended to accomplish three objectives:

1. To stop the downward trend in the funded status of the plan
2. To stabilize the plan
3. To put the plan on a course back to 100% funded status

That session, the Legislature approved the first two years of the recovery plan which included the 2012 and 2013 contribution increases. This stopped the downward trend in the funded status and stabilized the plan. It should be noted that the Legislature passed the full 4 year recovery plan for TFFR and they are now projected to be fully funded by the year 2044.

In 2013 PERS proposed the last two years of the recovery plan contribution increases in SB 2059. It received a favorable recommendation from the Legislative Employee Benefits Committee and was included in the Governors Executive Budget Recommendation. The bill introduced by PERS did not pass, but the third year of the recovery plan was added to HB 1452 in conference committee and passed.

In 2015 PERS proposed in HB 1080 the last year of the recovery plan contribution increases along with some benefit modifications. This included changes to the final average salary calculation, early retirement benefit reduction and changing the Rule of 85 to Rule of 90 with minimum retirement age of 60. The bill was given “no recommendation” by the Legislative Employee Benefits Committee, and was included in the Governors Executive Budget Recommendation. The bill did not pass; however, the benefit changes were added in conference committee on the OMB bill at the end of the session and passed.

PERS submitted HB 1053 in 2017 for the last year of the recovery plan contribution increases. The bill received a favorable recommendation from the Legislative Employee Benefits Committee but was not included in the Governors Executive Budget Recommendation due to the fiscal constraints facing the State. The bill did not pass.

PERS submitted 3 bills in the 2019 session to address the funding concerns of the plan. This included SB 2048 for the last year of the recovery plan contribution increases, SB 2047 to reduce the benefit multiplier for new employees, and SB 2046 to discontinue the Retiree Health Insurance Credit (RHIC) program for new employees and direct the 1.14% employer contribution to the DB plan. These bills all received a favorable recommendation from the Legislative Employee Benefits Committee and the contribution increase was included in the Governors Executive Budget Recommendation. The bills to reduce the multiplier and discontinue the RHIC passed, but the contribution increase bill did not pass.

PERS submitted 2 bills in the 2021 session to address the funding concerns of the plan. This included SB 2042 to have employers pay the actuarially determined employer contribution and SB 2046 for the last year of the recovery plan contribution increases. Both bills received a favorable recommendation from the Legislative Employee Benefits Committee and the contribution increase was included in the Governors Executive Budget Recommendation. Both bills failed to pass.

Testimony: Opposition to House Bill 1040
Before the Senate State and Local Government Committee
March 9, 2023

Good morning, chairman Kristin Roers and members of the Senate State and Local Government Committee, my name is Gary Feist, I have been a state employee for 31 years as an auditor in the Office of State Tax Commissioners Office. I'm here today in opposition to HB 1040 which would close the North Dakota Public Employees defined benefit pension plan to new hires. Many state agencies including the tax commissioner's office are struggling to recruit and retain staff. Closing the defined benefit plan will only make it more difficult to recruit staff and will increase agency's expenses for the continual posting of jobs and training of new hires.

The defined benefit pension plan is a benefit that is very important in recruiting and retaining quality employees. I previously severed on the State Employee Compensation Commission where legislators and employees studied and discussed the compensation of state employees and the need to be competitive in the job market. Studies completed by the state have shown that state employee wages lag the market and the benefits, including the defined benefit pension plan, allow the state to close some of the total compensation gap with other large employers in the state and surrounding states. Closing the defined benefit plan will make it more difficult to retain long term employees while also making it difficult to recruit new employees.

In a recent North Dakota Human Resources Management Services' Total Reward Survey employees were asked about compensation and benefits. On the issues of pension there were the following questions: "I prefer to have a defined benefit pension plan rather than a defined contribution plan" for which 42% of state employees said they strongly agreed while in answering, "I prefer to have a defined contribution plan rather than a defined contribution plan" only 3% said they strongly agree. State employees of all ages value the defined benefit plan.

In the National Institute on Retirement Security (NIRS) 2020 Issue Brief: Millennial State & Local Government Employee Views on Their Job, Compensation & Retirement by Tyler Bond and Kelly Kenneally it was noted that 92% of state and local millennials agree pensions serve a role in incentivizing long public service careers and 94% said pensions serve as effective tools for recruiting new employees. In the same article it was noted that research conducted by Milliman found that public employees with retirement plan choice overwhelmingly choose defined benefit pension plans over defined contribution plans.

The defined benefit plan will provide me and other state employees with a secure, modest retirement without a cost-of-living adjustment. The defined benefit plan has been an important benefit to me and has played a role in my decision to remain a state employee over the last 31 years when I have been recruited by other employers. To be competitive in the labor market, North Dakota needs to have multiple tools available to enable it to recruit and retain staff and one of those is the defined benefit retirement plan.

I hope North Dakota will not make the same mistake other states have made in closing their defined benefit retirement plans. West Virginia closed its DB plan only to close its DC plan and reopen the DB plan because it was less expensive for the state to administer than the DC plan. In a 2019 new and updated case study completed by the National Institute on Retirement Security (NIRS) on the states of Alaska, Michigan, West Virginia, and Kentucky which switched their new employees to a defined contribution plan reported the states' overall costs increased, did not address existing pension underfunding, and led to a loss of retirement security for employees. The NIRS study also looked at demographic changes, benefit costs, actuarially required contributions, plan funding levels, and retirement security and found the switch to a DC plan intensified pension funding problems and increased costs to the states and its taxpayers.

Let us learn from other states, I urge the committee to give and HB 1040 a do not pass recommendation. North Dakota public employees deserve a retirement plan that will provide a secure retirement for their quality service provided to the citizens of North Dakota. Thank you for your consideration.

Gary Feist

Chairperson and members of the committee:

I respectfully ask that you oppose closing the NDPERS retirement plan to new hires.

I have been a state employee for a little over three years. I applied to and ultimately came to work for the state in part because of the benefit package it offered. The defined-benefit pension plan played a large role in planning for my future in North Dakota and in setting my career goals. It will likely be a reason I continue working for the state for years to come. The defined-benefit plan gives me long-term stability without having to worry about retirement. It is a feature that I often bring up in conversation when I try to recruit others to join Team ND, which I proudly do with anyone seeking a new career opportunity.

North Dakota Public Employees Retirement System's (NDPERS) defined-benefit pension plan is a valuable recruiting tool for North Dakota job growth and provides stable retirement savings for our public workers. We must consider the future of our state and its employees. With large numbers of state employees set to retire in the next few years and a statewide workforce shortage ongoing, Team ND cannot afford to lose one of its primary employment draws. House Bill 1040 would close the defined-benefit pension plan and cost North Dakota taxpayers $5.5 billion. This is a fiscally irresponsible choice, and takes the retirement choice away from state employees, leaving them with only the defined contribution plan. I urge a "do not pass" vote.

Amy Nelson
Bismarck, ND

#23260

My name is Darrel Lund and I am a retired teacher of 42 years in the West Fargo Public School system.
I am strongly opposed to HB 1040, the bill that phases out the defined benefit plan for North Dakota public employees at a cost of $5.5 billions dollars to the taxpayers of our state.
Rather than overhauling a popular and beneficial plan, I encourage you to strengthen the current plan. I believe that if the PERS plan would mirror the teachers' retirement plan, it would be a much better and less costly option. When the teachers' retirement fund was underfunded, teachers and school districts, increased their contributions to make the fund solvent again.
It would also encourage workers to stay in our state, because if a worker moves out of state, the worker can withdraw their contributions and thereby forfeit the employers' contribution. The defined benefit favors a worker that stays and works in the state until retiring and collects their benefit based on a formula that includes their contributions as well as the employer.
It would be more efficient and beneficial for workers to pool their money together and have it invested by fund managers that should be more knowledgeable about financial matters. With defined contribution plans, each worker would be responsible to manage or hire someone to manage their account.
There are also tax advantages to the TFFR plan which the PERS plan is not using to its advantage.
I strongly urge a Do not pass recommendation from your committee.
Thank you,
Darrel Lund

#23266

Professional Fire Fighters of North Dakota

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

3/9/2023

Senate State and Local Government Committee

Madam Chairman and members of the Senate State and Local Government Committee,

My name is Darren Schimke, President of the Professional Fire Fighters of North Dakota. I rise before you on behalf of the PFFND in opposition of HB 1040.

Management consulting firm McKinsey reports that organizations that appear on "best places to work" lists often make the cut because their business strategy is premised on a long-term relationship with their employees. McKinsey credits companies for both the large and small signals sent to employees that an organization cares about its people.

Valued by employers as a workforce management tool to recruit and retain talent, offering defined benefit (DB) pension benefits is one way that employers send a loud signal to employees that they are committed to a long-term relationship. This provides a meaningful incentive for employees to stay in their job. Employees value pensions as a path of economic security in retirement. Decreasing plan benefits negatively affect that security.

It's important to remember that one of the main reasons many entities throughout the State attract and retain its public employees is largely because these workers understand the long-term value of their pensions.

There are experiences logged throughout the internet that offer important cautionary tales for governments to consider when changes to pension benefits are being studied. Drastic changes can actually encourage employees to leave their employment/town rather than stay long term.

As a 30-year employee of the City of Grand Forks Fire Department, I have witnessed firsthand the negative effects of decreases made to a retirement plan. In 1994, the City proposed decreases to the benefit multiplier and extending the average final years' salary from 5 to 10, along with an increase in employee contribution. After a lengthy negotiation period, compromises were made within all of the above-mentioned areas and implemented. In January 1996, the City choose to close the DB plan, which was in existence since 1970, to all new hires and opened a DC (Defined Contribution) retirement plan for new hires. Approximately 5 years after the DC implementation and as the Grand Forks firefighter's Local 242 union president, I noticed within my own department, and hearing from other departments, that we were all experiencing major turnover. The majority of these departures were not due to retirements, as years prior, but for seeking employment elsewhere. At the time, the Grand Forks Police Dept. FOP President told me that the number one reason for leaving employment stated during exit interviews was "better retirement benefits". The same reasons were being stated during exit interviews at the Fire Department, according to our then Fire Chief, Peter O'Neill. As the President of the City Employee Representative Group, I then inquired with the group's members about the morale of their departments. It was staggering to hear how low it was and the actions that were being taken to demonstrate low morale by employees. This was also being demonstrated within the fire department to a certain degree. With that concern and reading about the ND PERS Retirement plan in the Grand Forks Herald, I inquired with the Human Resource Department and the Finance Department about joining the ND PERS Retirement Plan. A few of my many selling points were plan longevity, plan stability, and recruitment/retention success stories. Long story short, the City of Grand Forks joined the ND PERS plan and the DC plan participants are now in a DB plan along with all new hires. Within a few short years, I can honestly say the level of morale rose drastically. We understand that things change and adjustments need to be made from time to time. In fact, we have supported past plan adjustment increase bills that originated from right here. But things like completely cutting out a benefit and offering a drastically decreased benefit all at once has the appearance of a knee jerk reaction that when something less (ex. contribution adjustment) would be more palatable and have positive results.

I currently serve on the City of Grand Forks Pension and Insurance Committee and one of the issues we deal with is the closed DB plan that was started in 1970. When this plan closed in 1996, new plan participants ceased. As the plan's retiree participants grow, the increased cost to the City to date is far greater than any projection that was presented to us in 1996.

With the ever-growing competition within the job market, to be a best place to work, employers must signal to employees that they are valued over the long-term. Cuts within pension benefits sends the exact opposite message.

Thank you for the opportunity to stand before you today and now I will take any questions that you may have.

Darren Schimke

Testimony in Opposition to House Bill No. 1040

Scott Miller, Executive Director

NORTH DAKOTA
PUBLIC EMPLOYEES
RETIREMENT SYSTEM

$4.6 Billion More Expensive

- This is the present value of how much MORE expensive over the next 23 years it will be to close the Defined Benefit plan and have all new employees go into the new Defined Contribution plan, rather than maintain the current DB plan
- Unfortunately, you cannot require future Legislatures to maintain adequate funding
- We do not yet know the cost of the Weisz amendment

Contributions to the DB Plan and DC Plan			
	Present Value of Total Employer Contributions for 2023 to 2046[1]	Difference from Baseline	Difference from Baseline - ADEC Funding
Baseline	$1,681,415,635		
Baseline - ADEC Funding	$2,489,470,983	$808,055,347	
Bill 280 - 6.50% Investment Return	$3,287,166,589	$1,605,750,953	$ 797,695,606
Bill 280 - 5.50% Investment Return	$4,560,649,023	$2,879,233,388	$ 2,071,178,041
Bill 280 - 4.50% Investment Return	$6,257,016,726	$4,575,601,091	$ 3,767,545,744

Massive Future Contributions

- The total of additional State and Political Subdivision contributions for the 2023-25 biennium, including the $240 million and $70 million infusions, is $330 million
- Next biennium the additional contributions will be $526 million
- On January 1, 2026, the State Employer contribution increases 40.1%, to 48.36% of compensation (this amount may change based on the 7/1/24 valuation)
- Agencies with federally-funded positions will need to find alternate funding sources for new DC member contributions to the DB plan

Bill 1040 - 2025 Closure Date:		
	2023-2025 Biennium	2025 - 2027 Biennium
State Agencies (1% increase in 2023-205, 40.1% increase in 2025 - 2027)	$ 11,047,957	$ 443,023,074
Counties (1% increase)	2,907,174	3,876,232
Cities (1% increase)	1,894,105	2,525,474
School Districts (1% increase)	3,913,549	5,218,065
Other Political Subs (1% increase)	748,125	997,500
Lump Sum Deposits	310,000,000	70,000,000
Total	$ 330,510,910	$ 525,640,345

Exorbitant Costs

Actuarially Determined Contribution Rate for All Actives,

DB and DC, State and Political Sub – 40.1% Increase

$70 Million Cash Infusion Every Biennium

Initial $250 Million Cash Infusion

State	Political Subdivisions
Additional 1% Employer	Additional 1% Employer Contribution
40% of Actives – Current Contributions	60% of Actives – Current Contributions

Cost of closing Main PERS DB plan

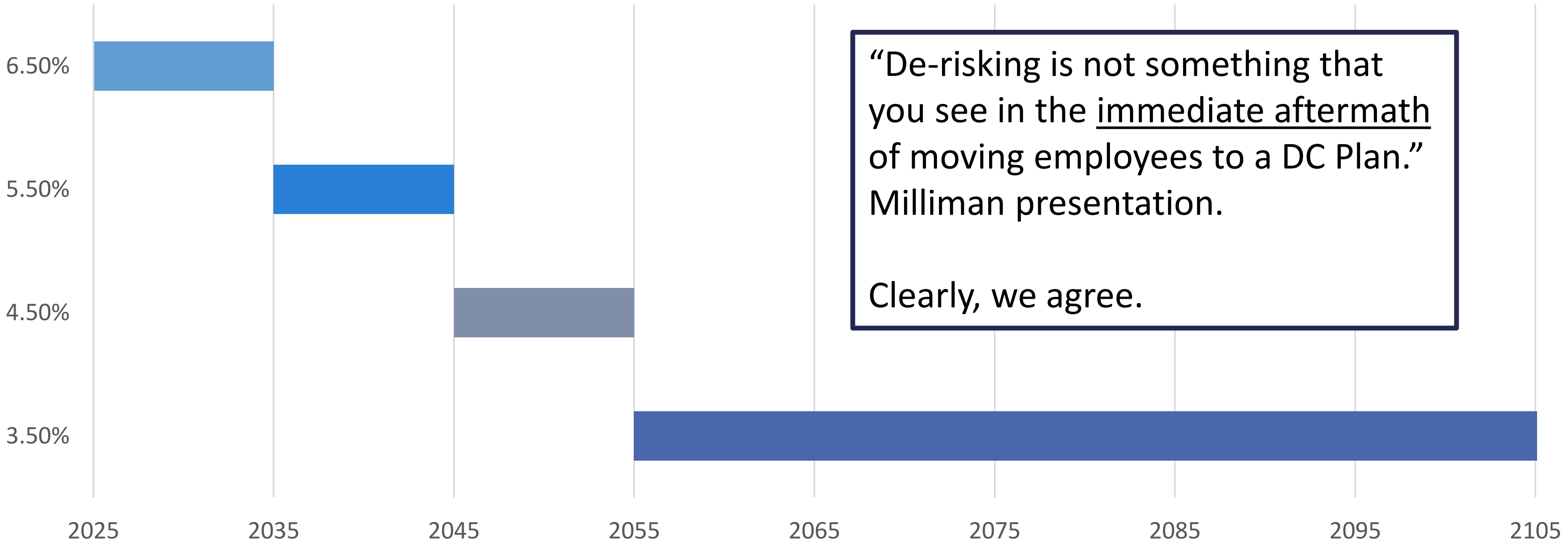
Credentialed Actuaries

"The Board shall cause a ***qualified, competent actuary*** to be retained on a consulting basis." NDCC section 54-52-04(4).
"As determined ***by actuarial valuations***, each state governmental unit shall contribute" the Actuarially Determined Contribution Rate. HB 1040.

- NDCC section 54-52-04(4), above, requires the NDPERS Board to retain and use a credentialed actuary to do these analyses.
- The Retirement Committee did not have Milliman, its actuary, analyze HB 1040.
- Any alternative numbers you may have seen are not from a credentialed actuary.
  - The Reason Foundation does not have actuaries on staff, and do not have our data
- The NDPERS Board could not rely on anyone other than a credentialed actuary to do these analyses, both from a statutory perspective and a fiduciary responsibility perspective. Why is anyone listening to any other numbers?

De-risking Doesn’t Happen Tomorrow

Glidepath to a 4.5% Blended Discount Rate



“De-risking is not something that you see in the immediate aftermath of moving employees to a DC Plan.” Milliman presentation.

Clearly, we agree.

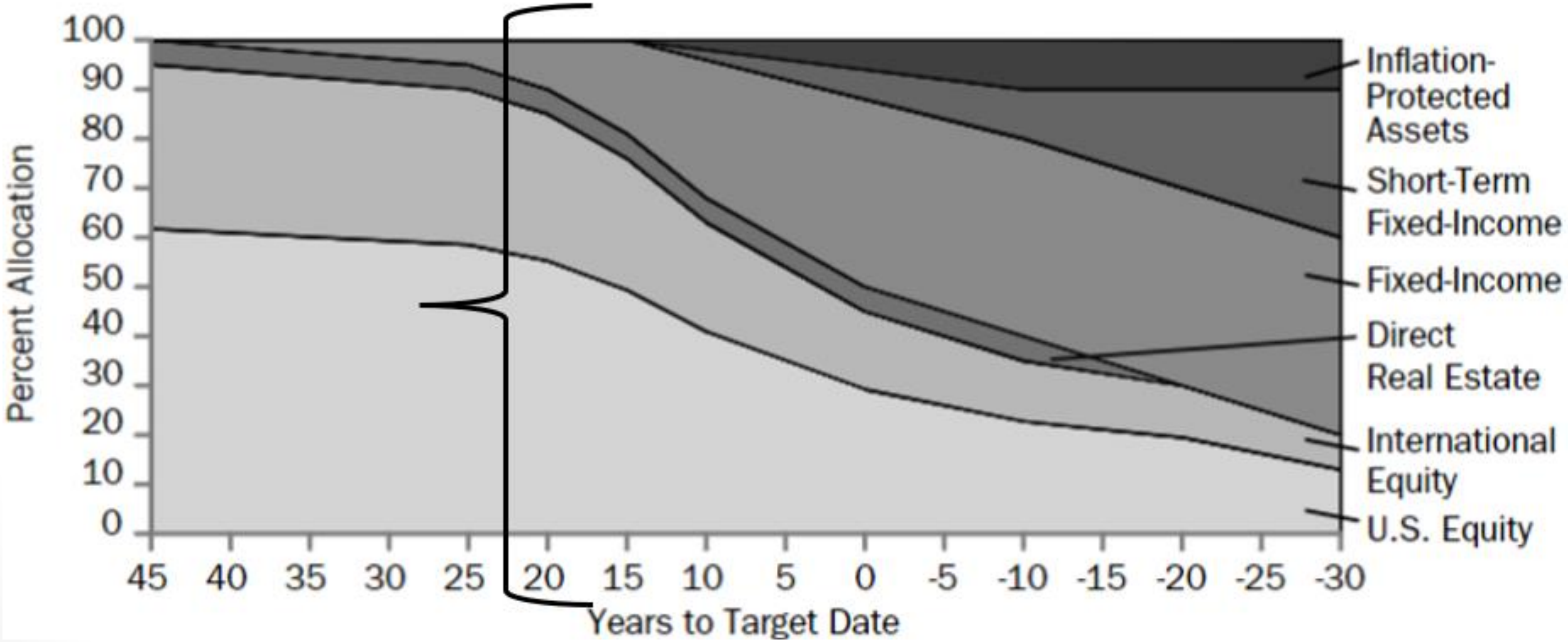
Interestingly, the Reason Foundation has historically argued that open public pension plans should never discount their liabilities by more than about 4.5%, but in this case argue that 6.5% is acceptable. For a closed plan.

De-Risking ***IS*** the Norm

- Our own experience - the NDPERS Board has de-risked the Job Service Plan asset allocation to below 3%
- “The Impact of Closing the Defined Benefit Plan at CalPERS”, March 2011
  - The California PERS plan is the largest in the country
- “Legislative Analysis: Close MPSERS Hybrid Pension Plan and Replace with Defined Contribution”, May 24, 2017 (Michigan)
- Cavanaugh Macdonald analysis of a proposal to close the Kentucky Teachers’ Retirement System, November 8, 2017
- “Costs of Switching from Pensions to Individual Accounts”, National Retired Teachers Association and the National Institute on Retirement Security, undated
- Rep. Steven Johnson, Chair of the Kansas House Pension Committee, told the Retirement Committee at its October 2021 meeting that if KS had gone to a DC plan, they would have had huge costs due to de-risking
- Private pension plans run by corporations HAVE to de-risk when they close a plan

De-Risking ***IS*** the Norm

- TIAA target date fund glidepath:



DB Transfer Amendment

- Introduced in the House Appropriations Committee
- State employee DB plan members with less than 5 years of service credit as of 1/1/25 have the option to "transfer to the defined contribution plan under this chapter"
  - Approximately 4,000 employees
  - It is not clear whether this means the current DC plan or the HB 1040 DC plan
- PERS will transfer 100% of the member's "actuarial present value of the eligible employee's accumulated benefit obligation"
  - Given that the Main PERS Plan is only 65% funded, the plan will lose 35% with every transfer
- State will contribute an extra $3,333 per year for three years to each transferee's DC account – potentially $40 million in total
- Waiting on the actuarial analysis to determine the total cost of this amendment
- Tax counsel has stated that giving current DB plan members the option to join the new DC plan and elect a contribution rate is a violation of the Internal Revenue Code

Tax Dollar Efficiency

Traditional defined benefit plans - advantages

- Efficient use of taxpayer dollars

- The Retirement Committee's own actuarial expert called Defined Benefit plans an "efficient use of taxpayer dollars"
  - Milliman Presentation to Retirement Committee, slide 16, April 11, 2022
- Milliman cited a study from 2022 that showed that employees receive about twice the retirement benefit in a DB plan for the same cost as a DC plan

Traditional defined contribution plans - disadvantages

- Inefficient use of taxpayer money

“Best Practice” DC Plan?

- The current DC plan has a mandatory contribution rate for new employees of 15.26%: 7% employee and 8.26% employer
- The new DC plan only has a mandatory contribution rate of 9.26%: 4% employee and 5.26% employer
  - Employee must elect to contribute more, up to 7% employee and 8.26% employer
  - In Oklahoma, which has a similar, if somewhat better, DC plan, only 43% of employees elect to contribute more than the minimum
- A recent study by the consulting firm Aon and the National Institute on Retirement Security found that a contribution rate of 17% of compensation is necessary for someone to retire at age 67, and 23% to retire at age 62
  - “The Real Deal for the Public Sector: Retirement Income Adequacy Among U.S. Public Sector Employees”, Eric Atwater, Tyler Bond, Dan Doonan, Emily Swickard (Dec. 2022).

“Best Practice” DC Plan?

- “The qualified default investment alternative must include an in-plan annuity.”
- We know of only one qualifying product, from TIAA
  - A complex product participants may not understand
  - Requires the selection of a named fund manager in addition to the underlying investments
  - Moving to a different provider may be difficult, making procurement problematic
  - Likely markedly more expensive than a typical target date fund
- Note this also places the fiduciary responsibility for setting this default with the Legislative Assembly rather than the Board
  - Investment costs are a primary source of fiduciary litigation
- This requirement basically creates a poor cash balance plan, not a DC plan
- Yet this is the reason that TIAA gives when it says the proposed DC plan is “best practice” – because it provides a ***defined benefit-like benefit***

$14,700 vs. $3,944-7,640

- The average benefit in the DB plan under the Main 2020 Plan versus the average projected benefit under the new DC plan ***<u>if the member elects the full 15.26% contribution</u>***
  - Using average retiree numbers from 2021 valuation (21 years of service, final average salary of $40,000), a 1.75% multiplier, and a DC plan return of 6% compounded annually
  - Depending on the final account balance and whether the individual takes out 3.4% or 4.0% per year
- DC plans are especially difficult for public safety personnel
  - Limited disability and early retirement funds
- PERS must make financial counseling available to new DC plan participants
  - Any additional cost for this requirement will come out of DC participant accounts

Vesting/Portability

- The vesting schedule for employer contributions to the DC plan:
  - Under two years of service, 0%
  - Two years of service, 50%
  - Three years of service, 75%
  - Four years of service, 100%
- Always 100% vested in employee contributions

- Defined Benefit Plan – three-year vesting in a guaranteed lifetime income
- Always 100% vested in employee contributions, plus guaranteed interest
- If participate in the 457 deferred compensation plan, can vest in up to 4% of the 8.26% employer contribution over 4 years
- For employees who only stay less than two years, the DB plan is better

2.87%

- The percent of new employees that elected to join the DC plan from 2013-2017 when it was open and available to all new state employees
- **<u>Only 2.36% of 20-somethings</u>** elected to join the DC plan at that time
- Current state employees also strongly prefer a DB plan:

Based on the information provided, I prefer to have a defined contribution (DC) retirement plan rather than a defined benefit (DB) retirement plan.* *As stated earlier in this survey a DC plan is similar to the well-known 401(k) and a DB plan is commonly referred to as a pension.	3840	2.18	3%
Based on the information provide, I prefer to have a Defined benefit (DB) Retirement Plan rather than a Defined Contribution (DC) Retirement Plan.* *As defined earlier in this survey a DB is commonly referred to as a pension and a DC is similar to the well-known 401(k).	3858	3.95	42%

Source: 2022 HRMS Survey of Current State Employees

Percent that "Strongly Agree"

Average Rating

75%

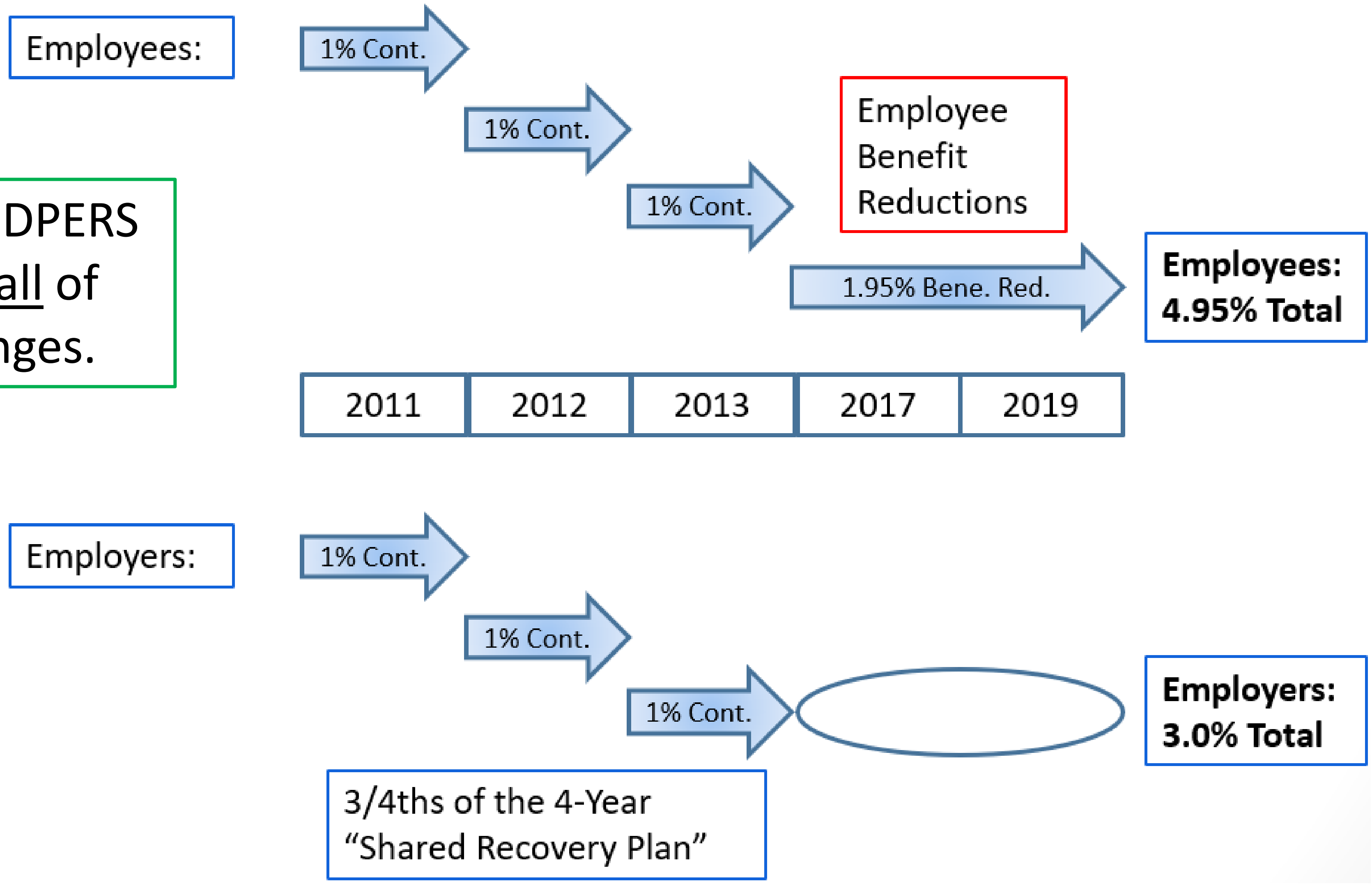
- The percent of DC plan members who ***elected to go back*** to the DB plan when given the opportunity to do so
- Those members agreed to pay ***an extra 2% of employee compensation*** to go back to the DB plan

Other States' Experience

- West Virginia – DB closure was far too expensive, and re-opened the DB plan
- Michigan – Closed the DB plan when it was 109% funded, with a $734 million surplus; in September 2019 it was 65% funded with a $6.6 Billion unfunded liability
- Alaska – closed the DB plan in 2005 and has paid billions of dollars more than anticipated; recruitment and retention issues for teachers and public safety have led to significant pressure to re-open the DB plan, including a new legislative proposal
- Oklahoma – closed the DB plan in 2018 and created a new DC plan that is better than this DC plan, and has already had two legislative efforts to re-open the DB plan
  - Employer contribution is 16.5% spread over both DB and DC employees
  - Costing the state more than if they had maintained the DB plan
  - Only 43% of new employees elect to contribute above the minimum
  - 87% of members who leave employment take a direct distribution rather than roll-over
  - Recruitment and retention has become a "major issue that is being discussed"

Employees Did Their Part

Notably, NDPERS proposed all of these changes.



Conclusion:
An Unreasonable Decision

- $4.6 billion more expensive over the next 20 years
  - Future Legislatures cannot be required to adequately fund this decision
- DB Transfer Amendment causes IRC problems and significant cost
- DC plans are an "inefficient use of taxpayer money"; DB plans are "efficient"
- DC plans provide half the benefit for the same cost as a DB plan
- The new DC plan will result in significantly lower savings than the existing DC plan
- Employees who leave before completing 2 years of service will not take any of the employer contribution with them
- Neither new employees nor current employees have shown a desire for a DC plan
- Recruitment and retention may become major issues for the state and political subs
- Why would you throw away a good DB plan in favor of a DC plan the sole benefit of which is that it provides a ***worse defined benefit-like benefit?!?***

Questions?

Email scottmiller@nd.gov
Call (701) 328-3901

House Bill 1040
North Dakota Retirement and Investment Office (RIO) on behalf of the Teachers' Fund for Retirement Board of Trustees
Neutral Testimony related to HB 1040 before the Senate State and Local Government Committee
Senator Kristin Roers, Chair
Senator Jeff Barta, Vice Chair

Janilyn Murtha, JD, MPAP – Executive Director

I. Introduction

The Retirement and Investment Office (hereinafter "RIO") was created by the 1989 Legislative Assembly to capture administrative and investment cost savings in the management of the investment program of the State Investment Board (SIB) and the retirement program of the Teachers' Fund for Retirement (TFFR). Statutory authority for the agency is found in North Dakota Century Code chapter 54-52.5 and the programs are governed by chapters 21-10 (SIB) and 15-39.1 (TFFR).

TFFR is a qualified defined benefit public pension plan. The program is managed by a seven-member board of trustees which consists of the State Treasurer, State Superintendent, two active teachers, two retired teachers and one school administrator appointed by the Governor.

The plan covers North Dakota public school teachers and administrators. Benefit funding comes from member and employer contributions (43%) and investment earnings (57%). During the past decade, active membership has increased 16.4% from 10,138 to over 11,800 participants, while retirees and beneficiaries have increased 26.0% from 7,489 to over 9,400.

Our 2022 actuarial valuation projects the TFFR plan to reach 100% fully funded status by 2044. The successful funding path is largely attributable to the statutory changes to the plan, including the creation of a tiered benefit structure and increase in contributions passed by the Legislature in 2011.[1]

II. Neutral Testimony relating to H.B. 1040

The TFFR Board of Trustees believes that defined benefit plans provide a valuable recruitment and retention tool for government entities when managed correctly and funded appropriately. TFFR employers are largely school districts which employ both TFFR and Public Employee Retirement System (PERS) members. From a public policy perspective, the TFFR Board is concerned that closing the PERS Main Defined Benefit plan will have a negative impact on the recruitment and retention efforts for the non-teaching employees of its school district employers.

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[1] H.B. 1134, 62nd N.D. Legislative Assembly (2011-2013).

The TFFR Board does recognize, however, that the PERS Main Defined Benefit Plan and the TFFR plan are currently on distinctly different funding paths. While the TFFR plan is projected to reach fully funded status by 2044,[2] the PERS Main Defined Benefit Plan is not projected to reach 100% fully funded status.[3] The TFFR Board recognizes that TFFR's funding success is largely attributable to the plan design and contribution changes adopted by the Legislature through H.B. 1134 in 2011; whereas the version of S.B. 2108, the PERS funding bill, which was ultimately approved in 2011, removed the final contribution increase needed for the PERS Main Defined Benefit plan. The TFFR Board observes that the legislature must pursue some type of change to address the PERS Main Defined Benefit Plan funding shortfall. The TFFR Board is therefore not opposed to HB 1040 in their current form so long as the public policy of closing defined benefit plans does not extend to defined benefit plans that are on a correct funding path, such as the TFFR plan.

III. Summary

The changes proposed by H.B. 1040 reflect an attempt to correct a funding shortfall for the PERS Main Defined Benefit Plan and to the extent that the public policy implications of these bills do not extend to defined benefit plans that are projected to reach 100% fully funded status the TFFR Board of Trustees takes a neutral position on this legislation.

[2] 10-26-22 ND Legislature Employee Benefits Programs Committee meeting, Presentation by the Segal Group, Inc. regarding the July 1, 2022, actuarial valuation of TFFR, p. 28, 29.

[3] 10-26-22 ND Legislature Employee Benefits Programs Committee meeting, Presentation by GRS regarding the July 1, 2022, actuarial valuation of PERS Main System, p. 33.

PERS HB 1040

Good morning, Chair Roers, vice chair Barta, and members of the Senate State and Local Government Committee, for the record my name is Mike Lefor and I represent District 37 – Dickinson in the House. I bring HB 1040 to you for consideration. This bill comes to you from the interim Retirement Committee which was required to study closing the defined benefit plan for the PERS main system retirement plan to new hires effective January 1, 2025 and to open a defined contribution plan to new hires after that date.

In this process, the committee sought the guidance of TIAA, and the Reason Foundation known for their expertise in retirement planning. The committee received testimony from four other states and their experience with pension plans. An important component to the bill would be to ascertain the cost of funding the states portion of the following;

1. The employer contribution and employee contribution portion paid by the state for the defined benefit plan.

2. The employer contribution and employee contribution portion paid by the state for the new defined contribution plan.

3. A twenty-year plan to pay off current NDPERS unfunded liability.

Those components are also called actuarially determined employer contribution or ADEC for short. The figure would be provided to the legislature no later than November 15th of each even numbered year prior to the following assembly.

We also looked at many statistics (all statistics are actuarial in nature).

Fiscal	Assets	Liabilities	Unfunded	Funded Ratio
2000	1,009,744,796	879,189,877	130,554,919	114.8%
2005	1,210,287,848	1,333,491,341	(123,203,493)	90.8%
2010	1,576,794,397	2,156,560,553	(579,766,156)	73.1%
2015	2,027,476,214	2,976,071,808	(948,595,594)	68.1%
2020	3,112,920,033	4,557,679,020	(1,444,758,987)	67%
2022	3,440,000.000	5,300,000,000	(1,860,000,000)	64.95%

Additionally, the legislature has made a couple of changes to code to lower future expenses.

1. In January 2016 – the rule of 85 changed to the rule of 90 for employees hired after December 31, 2015.

2. In January 2020 – the benefit multiplier was lowered from 2% to 1.75% for members enrolled after December 31, 2019.

Both measures make our defined benefit less attractive when compared to other states who have higher multipliers. It lowers the normal cost of the defined benefit plan; however, the results of those changes will not be felt for years and there is still no plan to pay off any of the NDPERS unfunded liabilities.

In conversations with former state chief people officer Stacy Breuer, she cited the following statistics.

1. In the past three years, the state has had a turnover rate totaling 38%. In 2016, the millennial generation become the largest in the workforce at 35%. By 2025, millennials and younger (Gen Z) will make up 75% of the workforce.
2. It is predicted these individuals will hold many different jobs by age 38, they look at their jobs as "projects."
3. From 2019 to 2022 the number of individuals who work remotely has skyrocketed as employers struggle to maintain workforce and give employees more options. Additionally, those who are in a hybrid status, meaning some work at the office and some remotely has grown as well. Working onsite has dropped.
4. "When we capture early talent at Team ND at less than 30 years of age, we are not keeping them."

In addition, the executive branch has visited with every department in state government and, as a result, their strategy to improve workforce recruitment and retention will be;

1. Increase compensation to compete in the marketplace.
2. Offer more training opportunities. Professional development.
3. Well being – Work – Home – Office
4. Benefits – Healthcare – Vacation – Retirement

With all of this information, we tasked our experts to do the following:

1. Design a "best practices" defined contribution plan to be competitive in the marketplace.
2. How do we successfully exit the defined benefit plan? What amount – percentage should we as employers invest in a defined contribution plan as a component of "best practices.?"
3. What amount of time should be given to allow for an orderly transition?
4. What are all of the potential costs associated with moving from a DB to a DC plan?

If we were to fund the actuarially determined employer contribution (ADEC) to properly fund the defined-benefit plan, the defined contribution plan and fund the unfunded liability over a twenty year period, the increased cost based on current employee levels would be approximately $95-$100 million per year. Nearly all of these increased costs come from finally beginning to pay the bill for NDPERS. Once debts from the defined benefit plan is paid off, our state will no longer need to worry about these sorts of massive unfunded liabilities again.

The bill being presented to you this morning, would allocate a one-time cash infusion of $250 million.

That is a big ask and I understand that, however, the sooner we can invest these dollars the sooner we get that money working to get a return for the plan. Of the assets raised for the plan currently, about 50% of the dollars came from employer and employee contributions and the remaining 50% from returns on those investments.

Some of the unfunded liability comes from the political subdivisions involved in the plan. HB 1040 provides for these subdivisions to increase their employer contribution rates 1%.

Regarding a defined contribution plan, TIAA (the #1 not-for-profit retirement market provider, paid more than $545B in guaranteed retirement income payments to millions of educators, healthcare professionals, and others in service) and the Reason Foundation (known across the country as pension experts.) weighed in with the committee the following objectives for a "best practices" defined contribution plan.

1. All employees after January 1, 2025 would be enrolled in a defined contribution plan.
2. A contribution rate of up to 12%-15% (employer and employee contributions) This plan would be up to 14%.
3. Throughout their working careers, this contribution and Social Security participation, should achieve adequate retirement security including the income target range of 70%-100%.
4. Provide 15-20 low risk investments, including in-plan annuities and a default investment option that adjusts its glide path over time including the option to annuitize a portion of their retirement savings into guaranteed lifetime income.
5. Provide employees with advice and guidance education, tools, and services throughout their lifetime that considers changing life events, (marriage, children, elder care, etc.) which allows employees to be on track to reach their lifetime goals.

These components allow for a "best practices" defined contribution plan to become more competitive in the marketplace against the public and private sectors. A defined contribution plan which provides for a 7% employer contribution and paying 4% of the employee contribution which is currently done in our states DB plan, makes it highly attractive retirement plan to recruit and maintain good employees.

The state's current defined contribution plan is missing many of the "best practices" components I have listed in my testimony.

It is important to mention that for the state's defined benefit plan, the state would continue to provide the employer contribution and a portion of the employees contribution this bill does nothing to change that. The liability for the DB plan is already there. Equate it to having a credit card debt and paying the minimum each month, you will never get it paid. Let's begin to pay this off over twenty years, right the ship, offer a "best practices" defined contribution plan, lower our turnover rate and maintain employees.

We need to fully fund our defined benefit plan until the last retiree has drawn the last check in the plan, we promised that to our valued employees.

This plan is good for our employees, provides an excellent recruitment tool for the future and gives today's employees exactly what they are looking for. The interim Retirement committee did their job and did it well. I would request a do pass recommendation from the Senate State and Local Government committee with a referral to House Appropriations. Ms. Chairman, that completes my testimony and I would be happy to answer any questions.

March 9, 2023

Senate State and Local Government Committee

Testimony on HB 1040

Presented by Gordy Smith

Madam Chair and members of the Senate State and Local Government Committee, my name is Gordy Smith and it is my privilege to appear before you today in opposition to HB1040. I worked for the State Auditor's Office for over 36 years before retiring because of health issues in 2013. I believe this bill will be detrimental to the hiring and retaining of future state employees. In addition, I believe it will also cause current and retired state employees genuine concern as to whether the state will live up to its responsibility to pay their full retirement benefits as promised when they were initially hired.

Two of the primary reasons that state employees remain employed with the state are the defined benefit retirement program and the excellent health care benefits. Terminating the defined benefit retirement plan removes one of these incentives. We have already heard the Governor and some legislators speak about spending tens of millions of dollars on workforce recruitment and retention in the upcoming biennium. Does this effort exclude state employees? Removing half their incentive to remain employed with the state certainly appears as though it does. Spending millions of dollars to help private employers retain their employees while passing legislation which damages the state's ability to hire and retain its employees makes absolutely no sense.

Switching the plan to a defined contribution plan is going to cost significantly more money over the next 20 years than fixing the plan according to actuarial calculations (billions of dollars by one actuarial estimate). Why not invest the money to fix the plan and keep one of the best aspects of employment with the state of North Dakota? State employees overwhelmingly prefer the defined benefit retirement program (as survey results show) so it seems ludicrous that legislators are going to turn around and spend billions of dollars over the next 20 years to close the defined benefit plan and give state employees something they don't want.

Most other states provide a defined benefit plan and some of those that previously switched to a defined contribution plan have either switched back or are considering it.

Media reports cite that the turnover rate for state employees last year was 14% which was the highest ever I believe. Salary studies have consistently shown that state employees are generally paid less than their private sector counterparts. These salary studies include comparisons of fringe benefits and the state's defined benefit retirement plan generally is used to offset a portion of the difference in salaries. Closing of that plan will only increase the difference and logically will result in more turnover. Those of you who are business owners or management understand the true cost of turnover.

The defined benefit plan provides the state employees a significantly better retirement benefit. Based on certain assumptions (i.e. annual rate of return), for an employee with 21 years of service who averaged $40,000 of annual salary, the defined benefit plan would provide almost double the annual retirement benefit. If the state is going to remove this substantial safety net, I believe substantially higher salaries are going to be needed in order to retain staff at the levels that are currently retained. This is especially true for the professional classifications such as lawyers, accountants, architects and engineers.

There are many other ways that the switch to a defined contribution plan is disadvantageous to state employees. For example, in the defined benefit plan their investments are pooled and the investment risks are shared by the entire pool vs the individual investor having the risk of the investments under a defined contribution plan. In the defined benefit plan experts make the investment management decisions while the individuals make those decisions in the defined contribution plan. In addition, as shown earlier the employee can estimate their future income in the defined benefit plan while in the defined contribution plan future income is uncertain.

I really think it's important that the full Legislature consider the issue of fairness when they vote on HB1040. The Teachers Fund For Retirement (TFFR) is a defined benefit retirement plan and its latest audit showed it had an unfunded liability of approximately $1 billion. Yet that fund is not included in this legislation. Instead that fund was given the chance to take less stringent measures to put it on the road to recovery over the next 20-

25 years. A cynical person might speculate that politics played a part in the decision to permit that fund to adopt measures to allow it to recover. Meanwhile the "nuclear option" was used on the PERS fund. The cynical person might speculate that the TFFR fund has members scattered throughout the state and the idea of terminating that defined benefit fund would cause an uproar and all legislators would hear about it. Meanwhile the majority of the PERS membership resides in the Bismarck-Mandan area and thus only a limited number of legislators will hear the complaints. Is this really fair? Why should politics play any part in such a large decision affecting so many loyal state employees?

Is it fair the Governor and this Legislature spend tens of millions of dollars to improve the hiring and retention of employees for the private sector while spending billions of dollars over the next 20 years to decrease the hiring and retention of state employees? Does that even make sense?

Please keep in mind that for the past several years legislators were asked to address the unfunded liability of the PERS defined benefit plan and they declined to do so. It appears that the sponsors of HB1040 just want to kill the PERS defined retirement plan regardless of fairness (compared to TFFR), despite the fact that the Legislature was asked to fix it for years and declined, not caring what the members of the plan prefer and without serious consideration to the fact it is going to cost several times more to kill it than to fix it. In this case "the end justifies the means" no matter how ludicrous it seems.

Current and retired employees have genuine and understandable concerns about receiving their full and promised retirement benefits if the defined benefit plan is terminated. While this Legislature can pass a law requiring future contributions from Legacy Fund earnings or any other funding source, future legislatures can just as easily repeal that section of the law. This Legislature cannot absolutely bind future legislatures to supporting the full payment of the commitments made to the current and retired state employees. While there is a moral and almost certainly a legal obligation to pay those commitments, that does not lessen the concerns that loyal employees who admirably have served the state have regarding their retirement payments.

SB2239 which was passed by the Senate appears to me to be a common-sense fix for the PERS defined benefit plan. It provides a path to make the plan financially sound over a reasonable period of time. It also provides any employee the option of participating in a defined contribution plan should they wish (although traditionally a significant majority of state employees have not chosen that alternative).

In summary, I believe this bill will result in spending billions of additional dollars over the next 20 years to close the plan than would be necessary to fix it and will result in the state having a retirement plan that a significant majority of state employees do not want. It will also ultimately result in damaging the hiring and retention of state employees. Furthermore, passage of this bill will only cause current and retired state employees serious and understandable concern as to the state's intention of honoring their responsibility to pay them their full retirement that they earned and were promised when they were hired. It is simply the worst solution to addressing the unfunded liability the PERS defined benefit fund faces.

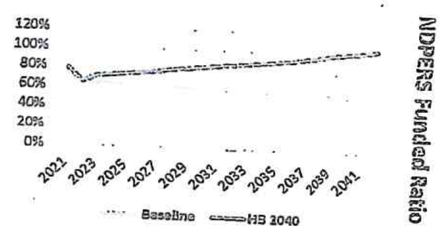
I respectfully request that you give HB1040 a do not pass recommendation. Thank you for your time and I would do my best to answer any questions the committee may have.

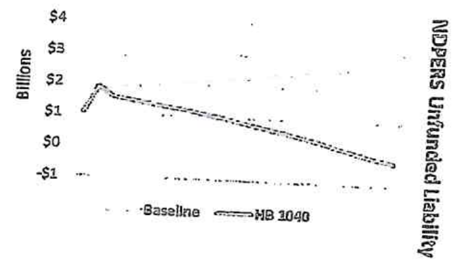
North Dakota Public Employees Retirement System (NDPERS)

REFORM ALERT:

The Benefits of House Bill 1040

Commits the State to Fully Funding All NDPERS Retirement Benefits





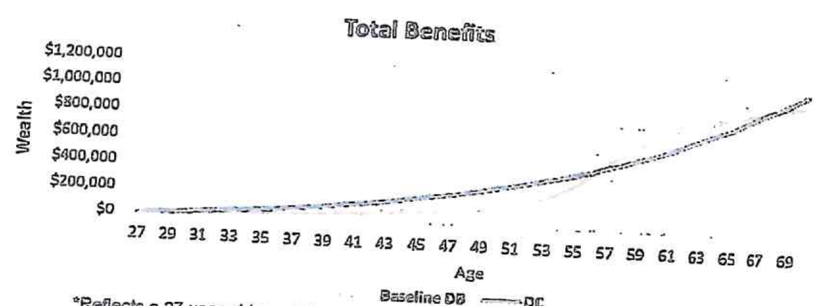
- NDPERS currently holds $1.8 billion in unfunded pension promises and expects to be insolvent in 80 years absent reform, largely due to insufficient funding and the growing interest costs from the state's accumulating debt.
- HB 1040 would shift NDPERS to an industry standard and actuarially sound method of funding, ensuring the state can deliver on its promises to members and retirees.

Saves Money for North Dakota Taxpayers

	Baseline	HB 1040
Total Employer Contribution	$2 Billion	$4.1 Billion
Ending Unfunded Liability	$2.8 Billion	-$275 Million
Total Long-term Cost	$4.9 Billion	$3.9 Billion

- By making a commitment to paying off NDPERS debt and preventing future debt, the state can expect to save over $1 billion in NDPERS costs over the next 20 years.

Improves Benefits For Most NDPERS Employees



*Reflects a 27-year-old new hire earning the average NDPERS entry age salary of $38,703 and participating in the full DC match..

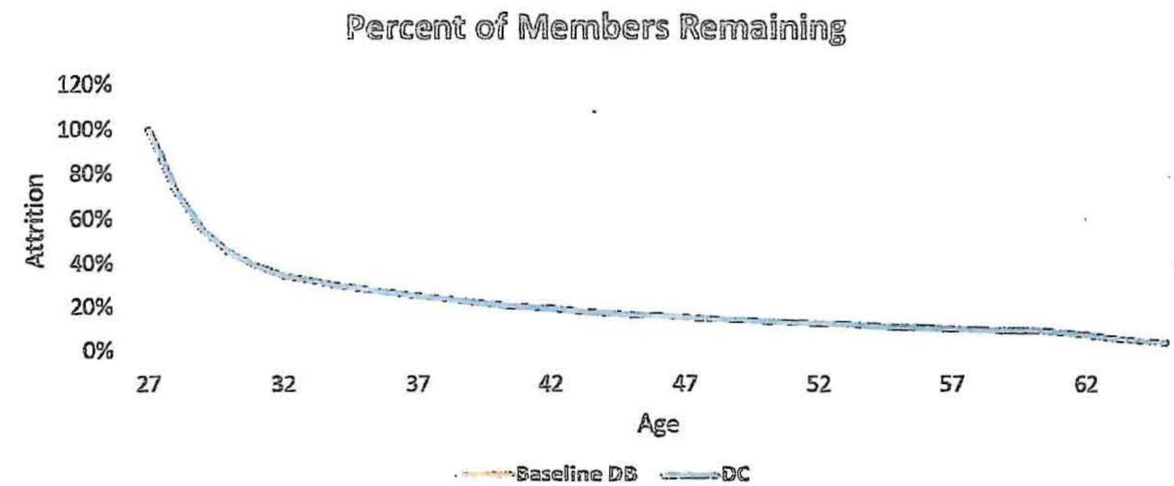
- According to Pension Integrity Project analysis, for an average entrant into NDPERS, the proposed defined contribution plan's benefits would be more generous than the current NDPERS defined benefit plan's benefits.

PENSION INTEGRITY PROJECT CONTACTS

- Leonard Gilroy, Senior Managing Director (lenard.gilroy@reason.org)
- Ryan Frost, Policy Analyst (ryan.frost@reason.org)

Better Retirement Security for 85% of New NDPERS Members

- NDPERS has one of the highest turnover rates of any defined benefit plan in the country.
- Approximately 50% of all new hires leave NDPERS service before they reach the plan's vesting period of three years.
- This means that half of all members leave their jobs with only a refund of their own pension contributions, plus interest earned. They forfeit all employer contributions made and are not eligible for any pension benefit.
- The defined contribution retirement plan established in HB 1040 would ensure that all North Dakota employees are on the right path to having healthy retirement savings, not just the few workers who stay for 30+ years.



Why Not Maintain the Status Quo?

- ***Workers have already spoken!*** *86 out of 100 state employees hired today will leave their public employers before earning an unreduced NDPERS pension.*
- *The benefit offered to future state employees in House Bill 1040 would provide benefit portability with a guaranteed employer contribution and match, improving North Dakota's public sector retirement benefits and making them just as—or more—attractive than most private sector retirement offerings.*

PENSION INTEGRITY PROJECT CONTACTS

- Leonard Gilroy, Senior Managing Director (lenard.gilroy@reason.org)
- Ryan Frost, Policy Analyst (ryan.frost@reason.org)

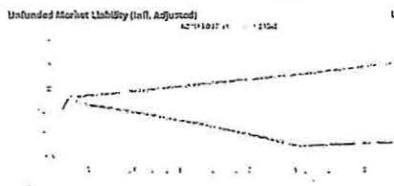
HB 1040 - NDPERS Reform

Today, NDPERS is estimated to be $1.9 billion underfunded, adding an additional $400 million since last session alone.

According to a recent report from the National Conference on Public Employee Retirement Systems (NCPERS), an organization that represents and advocates for defined benefit public pension plans, **North Dakota is one of just five states that has an unsustainable public pension debt trajectory.**

NDPERS will continue to accrue unfunded liabilities, ultimately exhausting its assets in approximately 80 years under a best-case scenario. If market conditions worsen, the fund will run out of money much sooner without HB1040.

NDPERS Debt– NDPERS Assumed Returns



NDPERS UAL – 6% returns + double recession

HB 1040 addresses many of the challenges facing NDPERS, helping turn it away from a path of perpetual underfunding, and setting it on a course to **pay off existing debt in the next 20 years.**

Cost of Keeping NDPERS DB vs HB 1040

If NDPERS investment return assumptions are met, HB 1040 would save **North Dakota $2.2 billion dollars** over the next 30 years compared to the current NDPERS DB.

Scenario	Total ER Cont.	Ending UAL	All-in Cost
NDPERS DB	$3.4 billion	$3.5 billion	$6.9 billion
HB 1040	$4.7 billion	$-0.1 billion	$4.7 billion

If NDPERS investment return assumptions are NOT met, HB 1040 would save **North Dakota $2.7 billion dollars** over the next 30 years compared to the current NDPERS DB.

Scenario	Total ER Cont.	Ending UAL	All-in Cost
NDPERS DB	$3.4 billion	$7 billion	$10.4 billion
HB 1040	$7.2 billion	$0.5 billion	$7.7 billion

HB 1040 fixes the systematic underfunding that has existed for NDPERS over the past two decades by swapping from contribution rates set in statute to an "actuarially determined rate," or "ADEC" rate for short.

ADEC is a calculation performed during the annual pension valuation process that shows what contribution rates are needed to pay for both benefits and debt servicing costs.

Adopting an ADEC funding policy is a crucial first step in getting North Dakota on the path to fully paying for its pension obligations.

To assist that paydown, sponsors have added other cash infusions into HB 1040, beginning with $240 million in year one and another $70 million per biennium until the plan reaches 90% funded.

HB 1040 - NDPERS Benefit

HB 1040 closes the current structurally underfunded defined benefit plan to all future new hires and instead offers them an upgraded version of the state's existing defined contribution retirement plan.

The cost of the current defined benefit is saddled by years of stifled contributions and a high interest rate (historically around 8%) on the pension system's accruing debt.

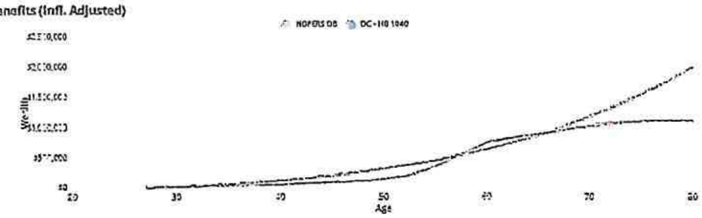
HB 1040 would ensure **zero accruals of new unfunded liabilities** related to future hires.

The level of benefits offered in the **NDPERS DB is the worst in the country.** This is due to the extremely low multiplier of 1.75% that the NDPERS pension uses for calculating benefits.

HB 1040 Offers a Better Benefit

The proposed defined contribution plan's benefits would be **more generous and advantageous to most public workers, in contrast to the pension benefit which is optimal for only a small number of workers who stay for 30 years.**

Total Benefits (Infl. Adjusted)



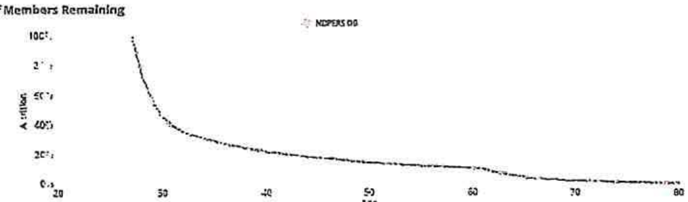
NDPERS Turnover

NDPERS currently has one of the highest turnover rates in the country. 55% of new employees leave before they reach three years of service.

Only 9% of new NDPERS hires make it to 30 years of service.

Due to the high turnover, most members leave NDPERS-covered employment with only a refund of their own pension contributions, plus interest earned, forfeiting all employer contributions made and are ineligible for any pension benefit from NDPERS.

Percent of Members Remaining



The current DB pension is not retaining public employees.

Pointing to "recruitment and retention" as a reason to keep the current DB plan is mistaken.

HB 1040 - Myths

Myth 1: Closing the NDPERS DB requires de-risking the investment portfolio.

NDPERS administrators have said that closing the defined benefit pension plan to new entrants could result in cash flow issues decades from now, and therefore recommends lowering the assumed rate of investment return and discount rate on liabilities to 4.5%, down from the current 6.5% assumption. This logic needlessly inserts billions in previously unrecognized unfunded liabilities and higher costs into their fiscal note calculations.

There are no legal, financial, or professional requirements or mandates that the discount rate be immediately changed when closing a defined benefit plan or opening a new benefit tier.

States like Texas, Oklahoma, Florida, Michigan, and Arizona have all recently enacted plan design and funding policy reforms similar to those in House Bill 1040 and none of these states significantly lowered their assumed investment return or discount rate as part of reform.

None of those reforms have created any cash flow issues, and all have seen significant funding progress to their pension systems.

The risk associated with future negative cash flow exists with or without reform, and if the state wanted to address it, it would not be standard practice nor recommended to immediately lower the discount rate—this is a scare tactic to put a large fiscal note on the bill.

The interim retirement committee was advised by their consulting actuary, Milliman, that they were unaware of any **other reform in the past 20-30 years where an immediate de-risking** of a DB plan's assets took place when swapping to a defined contribution plan.

Myth 2: HB 1040 affects public safety employees, higher education employees, judges, and teachers

This plan only affects employees in the MAIN pers system. None of these employee groups are affected. They will still be enrolled in the current NDPERS DB.

Myth 3: HB 1040 will cost an additional $7.5 billion dollars

The cost figures of HB 1040 being propagated by opponents are dishonest. The only costs of HB 1040 come from catching up on what the state owes current and former employees for their pensions, it has nothing to do with new hires or a swap in plan design.

Public pension plans are not Social Security, they are pre-funded benefits. It's dishonest to say that new members are needed to fund previously accrued liabilities.

Any claims about cash flow issues stemming from a plan design swap are disingenuous. **NDPERS will have more money coming in over the next 23 years than at any point in the plan's history.**

If there were cash flow concerns, they are there already, as the NDPERS DB is projected to fall into insolvency in the near future. **Having MORE money coming into the plan doesn't create cash flow issues, it does the opposite.**

Oklahoma swapped their public employees to a DC plan in the early 2010s, with a similar unfunded liability figure to NDPERS, and has already fully funded their DB plan.

North Dakota Public Employees Retirement System (NDPERS)

Correcting the Record: Debunking HB1040 Opposition

Several special interest groups continue to mislead North Dakota legislators about HB1040. Below is the Pension Integrity Project's deconstruction of their latest attack.

House Bill 1040
Total Cash Outlays Over 20 Years
To Close Defined Benefit Plan

	4.5% Investment Return	5.5% Investment Return	6.5% Investment Return
General Fund Transfer	250,000,000	250,000,000	250,000,000
Legacy Fund Earnings	630,000,000	560,000,000	560,000,000
Increased ADEC	3,721,509,761	2,369,730,955	1,958,375,[illegible]
ADEC based on DC payroll	945,665,405	443,430,756	86,367,515
Total Cash Outlays	5,548,174,166	3,623,161,710	2,865,742,531
Approximate ADEC Funding Splits			
General Fund	2,749,720,000	1,572,180,137	1,078,307,646
Special Funds	1,564,400,000	950,315,299	761,905,678
Federal Funds	334,000,000	794,367,775	235,125,008
	4,663,120,000	2,026,809,151	2,075,336,332

Notes:

1. The above cash outlays are from the original HB 1040 GRS actuarial analysis. HB 1040 as amended pushes payment of ADEC out one year and the cost of that is about $45 million higher than the cash outlays shown above.

False!

2. The Reason Foundation is not an actuary and does not have North Dakota's data.

3. TIAA is not an actuary and does not have North Dakota's data.

4. Milliman IS an actuary but was not requested to perform an actuarial analysis on HB 1040 or the amended bill

5. GRS is licensed actuary on contract with the State of North Dakota to perform actuarial analyses and performed the actuarial analysis for the original HB 1040 and HB 1040 as amended.

6. GRS's actuarial analysis 2/1/2023 : *"The above discussion suggests that if the plan is closed, (1) it may not be possible to develop a portfolio that earns 6.5% return throughout the life of the plan, and (2) at some point, the asset allocation will be changed and lower returns should be expected. We have included alternate lower investment assumptions of 5.5% and 4.5% in our analysis. There is no way to quantitatively determine the actual closure cost of a defined benefit plan. In reality, the asset allocation would most likely be changed gradually over time and costs will be different than shown for a number of reasons. For example, if we assume an investment return rate of 6.5% for 10 years, 5.5% for the next 10 years, 4.5% for the next 10 years and 3.5% thereafter, the liabilities would be equivalent to assuming an investment return rate of 4.4% for the entire period."*

WHAT!?

Prepared by Pam Sharp
Coalition for Retirement Stability

Reason Foundation's analysis is based on NDPERS' publicly available data and within 1% of NDPERS/GRS' modeling.

Milliman provided an analysis on a reform scenario almost identical to HB1040 during the 2022 interim and can be found HERE.

NDPERS ignored most of this analysis when setting rates at their January Board Meeting. Rather than phasing in the lowering of the discount rate, the Board simply chose to adopt the "entire period" rate. No other pension reform has required "de-risking" in the aftermath of a pension design swap. During a July 21, 2022 hearing, Milliman stated directly that "De-risking is not something that you see in the immediate aftermath of moving employees to a DC plan."

PENSION INTEGRITY PROJECT CONTACTS

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- Ryan Frost, Senior Policy Analyst (ryan.frost@reason.org)

FALSE!

This is a financial scare tactic, and no state has ever done this. The costs come from paying down ALREADY existing unfunded liabilities. NDPERS cash flow will increase while ADEC payments are being made. Any de-risking conversation because of "cash flow" doesn't need to happen for at least 23 years, if at all.

The argument of having to sell assets due to cash flow needs is patently false. NDPERS will have more dollars coming in over the next 23 years than at any point in the plan's history.

80% funded is not fully funded. The American Academy of Actuaries has even spoken out against the "80% funded" myth.

OPPOSITION TO HOUSE BILLS 1039 AND 1040

Coalition for Retirement Stability

House Bills 1039 and 1040 Close the Defined Benefit Plan and Requires All New Employees to Enroll in a Defined Contribution Plan

HOW MUCH DOES IT COST?

The table below compares the cost of closing the Defined Benefit Plan over 20 years to providing Actuarial Determined Employer Contribution (ADEC) funding to the Defined Benefit Plan over the same time period.

For Comparison Only

But Why!?

	Total cash outlays over 20 years to close ND Defined Benefit Plan Assumes [illegible] Investment Return Due to Sold Assets	Total cash outlays over 20 years with ADEC funding, Defined Benefit Plan funded over 80% after 20 years Assumes 6.5% Investment Return
General Fund Transfer	$290 Million	$0
Legacy Fund Earnings Transfers	$630 Million	$0
ADEC for Defined Benefit Plan	$3.721 Billion: General Fund $1.974B, Special Funds $1.414B, Federal Funds $333M	$725 Million: General Fund: $362M, Special Funds, $261M, Federal Funds: $102M
ADEC Allocation Based on Defined Contribution State Payroll	$946 Million	$0
	Additional State Cost to Close Defined Benefit Plan: $5.587 Billion	**Additional State Cost to fund Defined Benefit Plan with ADEC:** $725 Million Increased Employer Contributions for Political Subdivisions Amounts to $795M

HB 1040 ensures the citizens of North Dakota will soon reap the benefits of no longer having their tax dollars go towards paying down expensive unfunded liabilities.

Really, Nothing?

USE OF LEGACY FUND EARNINGS IS WRONG

Using funds from the Legacy Fund Earnings to close out North Dakota's Defined Benefit Plan is wrong.

Appropriating $630 million from the Legacy Fund earnings to close the defined benefit plan provides absolutely nothing for the citizens of North Dakota

The current pension ALREADY doesn't keep employees. 55% of employees leave before vesting. This makes NDPERS one of the highest turnover plans in the entire country.

False!

BAD FOR RECRUITMENT AND RETENTION

- State employees are paid less than the private sector is paid. The Defined Benefit Plan helps make up for the lesser salary. Closing the Defined Benefit Plan takes away that benefit.
- Only 2.87% of new employees elected to join the Defined Contribution Plan when it was made available to them from 2013 to 2017
- Just 3.95% of State employee survey respondents preferred a Defined Contribution Plan over a Defined Benefit Plan in the HRMS Survey of Current Employees.
- Current Defined Contribution Plan has mandatory contribution rate of 15.26% (7% employee + 8.26% employer). New Defined Contribution Plan has a mandatory contribution rate of 9.26% (4% employee + 5.26% employer). Employees may elect to contribute 3% more and State would match

3 Things to Keep in Mind!

1. The DC plan proposed in HB1040 is more generous than the current NDPERS DB plan.
2. Defaults matter. If the DC was the default, most employees would have been in the DC plan.
3. If provided with benefit accrual charts, most employees would choose the better DC benefit under HB1040.

HB 1040 doesn't require a single dollar from employees who choose not to contribute more towards their plan. If they choose to contribute towards their retirement in the future, the state will match up to 3%.

PENSION INTEGRITY PROJECT CONTACTS

- Leonard Gilroy, Senior Managing Director (leonard.gilroy@reason.org)
- Ryan Frost, Senior Policy Analyst (ryan.frost@reason.org)

False!

The DC plan offered under HB 1040 is more generous for more employees.

The proposed Defined Contribution Plan generates about half of the retirement income of the current Defined Benefit Plan.

Defined Benefit Plan with 1.75% multiplier vs Defined Contribution Plan with 6% return

EXAMPLE:

An employee with 21 years of service, final average salary of $40,000.

Defined Benefit Plan		Defined Contribution Plan
1.75% Multiplier	← →	6% Return
Generates $14,700 Annually in Retirement		Generates $7,640 Annually in Retirement (Assuming Individual Takes Out 4% Per Year)

NDPERS has seen a downward trend in its funding since 2000. Investment returns are part of the reason. Poor funding methods are another reason.

NO DISABILITY PLAN

The Defined Contribution Plan does not provide an option for long-term disability, while the Defined Benefit Plan includes long-term disability. This is particularly bad for public safety personnel

HOW DID WE GET HERE?

The 2008 financial crisis caused the fund's assets to drop by over 20% and subsequent legislative assemblies have not funded the complete recovery plan to get the fund back on track.

NO LEGISLATURE CAN BIND A FUTURE LEGISLATURE

This bill assumes future legislatures will appropriate very large sums of money over 20 years, but cannot require them to do so.

This can be said about any public program. The costs of this bill do not come from swapping plan designs. They come from properly funding the existing DB liabilities. The rising debt in NDPERS is already binding future legislatures to increasingly larger payments if changes aren't made.

WHAT HAPPENS IF FUTURE LEGISLATORS DO NOT APPROPRIATE ALL THE FUNDING?

The fund will continue to pay retirement benefits until the fund is spent down to zero, when no more retirement benefits will be able to be paid, even though the state is obligated to pay these retirement benefits.

DB benefits are constitutionally protected from impairment. They will be paid by the state, no matter what. If the fund runs out of money, the state will be funding benefits on a pay-as-you-go basis, similar to Social Security. Costs will go up 50% above what they are now. This will happen sometime in the future if changes aren't made.

PENSION INTEGRITY PROJECT CONTACTS

- Leonard Gilroy, Senior Managing Director (leonard.gilroy@reason.org)
- Ryan Frost, Senior Policy Analyst (ryan.frost@reason.org)

Reason Foundation is a national 501(c)(3) public policy research and education organization with expertise across a range of policy areas, including public sector pensions, transportation, infrastructure, education, and criminal justice. For more information about the Pension Integrity Project at Reason Foundation, visit reason.org.

Opponents of HB 1040 are bringing up a few examples of states that have adopted DC plans which are reportedly "moving back" to a DB plan, citing challenges with recruiting and retention. A closer examination of each of these examples rebuts the assertion that the states are seriously considering a move back to a DB-style retirement plan. Some of the examples gained moderate levels of support last year (backed by pressure from unions), but all fell short once policymakers started to ask questions about the actual long-term risks and costs of reopening their pension plans. Looking back, there is just one example where a state switched to a DC plan and later went back to a DB plan, that being West Virginia in 2005. Details on all three of these examples are given below:

West Virginia

- West Virginia closed their DB plan in 1991 in favor of a new DC plan, only to reopen their DB plan in 2005. The original reasoning for closing the DB plan was due to funding issues, which were never addressed despite the closure of the DB. West Virginia's DC strategy didn't work for the following reasons:
    - The funding problems that spurred the switch away from a DB plan were never addressed. A decade later, the state still had significant funding problems with the legacy plan, which brought many to the incorrect conclusion that the DC reform didn't work.
    - The DC plan was poorly structured with contributions that didn't adequately save enough for retirement.
- HB 1040 explicitly avoids the mistakes that West Virginia made.
    - The reform addresses the funding problems with ADEC contributions, which will ensure that the legacy DB plan will actually see significant improvement in its funding.
    - The DC plan is structured to adhere to best practices in retirement savings. Unlike West Virginia's attempt, the contributions going into this DC plan **are** adequate.
- 2022 legislation in West Virginia (HB 2800) was a proposal to let those who elected to be in the remaining optional DC plan to switch their choice to the existing DB plan. Considering this legislation never made it out of committee, this is a poor argument for a state moving from DC to DB.

Oklahoma

- Oklahoma closed its non-teacher pension plan to new members in 2014 after major funding challenges. Due to this and their focus to pay down the legacy debt accrued by the DB plan, the state has gone from 66% funded to 100% funded in 2021.
- A freshman Republican ran a bill last year (HB 2486) to reopen the DB plan. The motivation behind this effort was clearly to please the unions in his district. The Speaker let the vote happen before much scrutiny was applied. The bill did not have any support in the Senate and failed to move.

Pension Integrity Project at Reason Foundation

reason FOUNDATION

Modeling Methodology & Approach to Analysis of Public Retirement

The Pension Integrity Project (PIP) at Reason Foundation provides technical assistance to government policymakers to assess the solvency of public employee retirement systems and analyze the potential impacts of potential reforms. This assistance is grounded in years of experience developing effective, bipartisan policy solutions that address the complex needs of government employers, employees, retirees, and taxpayers. PIP's work demystifies complicated retirement policies with advanced actuarial modeling, built by a team of experts and backed by industry-leading actuarial consultants.

To advise on the immediate and long-term effects of policy decisions, PIP uses custom-built actuarial and employee benefit models that are tailored to reflect each unique retirement system. While PIP does not have access to individual participant-level data—accounting of the behavior of each individual participating member—given its proprietary nature, *that level of data is not necessary to develop highly accurate models* that allow for forecasting the factors most relevant to policymaking: general projections of liabilities, assets, and employer/employee contributions.

Highly accurate actuarial models require only the assumptions used by the pension system, which are publicly available and reported in the annual actuarial valuation and other common reports. PIP uses the system's current assumptions to develop advanced and dynamic actuarial modeling to provide valuable context on the near and long-term fiscal and financial impacts of various policy options.

PIP's team of experts frequently carries out checks and calibrations—holding findings up to official actuarial reporting—to ensure the accuracy of the models used. PIP also subjects forecasts and outputs to rigorous review by policy experts and licensed consulting actuaries.

Reason Foundation experts are particularly proficient at delivering intricate and plan-specific analyses in a way that is easy to understand and applicable to policymakers. PIP even develops interactive tools that put the wide possibilities of modeling directly in the hands of policymakers.

The Pension Integrity Project develops several different types of modeling to address the various policies that affect the overall success of a public retirement plan:

- Funding models project the liabilities of a plan as well as the short and long-term costs associated with policies.
- Employee benefit models calculate the utility of a retirement plan over time, illustrating how well a plan delivers on benefits offered to public workers at different ages and years of service.
- Return probability analyses evaluate the likeliness of specific plans achieving different market results.

Reason's actuarial modeling and analysis have contributed valuable, decision-relevant information to the policymaking process in several states that have successfully implemented bipartisan pension, including Texas, Michigan, Arizona, Colorado, New Mexico, and Florida.

PENSION INTEGRITY PROJECT CONTACTS

- Zachary Christensen, Managing Director (zachary.christensen@reason.org)
- Leonard Gilroy, Senior Managing Director (leonard.gilroy@reason.org)

House Bill 1040
Total Cash Outlays Over 20 Years
To Close Defined Benefit Plan

Strategic Investment and Improvements Fund	$240,000,000
Legacy Fund Earnings	630,000,000
Increased Actuarial Determined Employer Contribution (ADEC)	3,721,508,761
Additional ADEC based on DC payroll (cannot be paid with Fed. funds)	946,665,405
Total Cash Outlays	**$5,538,174,166**

Approximate ADEC Funding Splits	
General Fund	$2,749,720,000
Special Funds	1,584,400,000
Federal Funds	334,000,000
	$4,668,120,000

Notes:

1. The above cash outlays are from the original HB 1040 GRS actuarial analysis. HB 1040 as amended pushes payment of ADEC out one year and the cost of that is about $40 million higher than the cash outlays shown above.

2. The Reason Foundation is not an actuary and does not have North Dakota's data.

3. TIAA is not an actuary and does not have North Dakota's data.

4. Milliman **IS** an actuary, but was not requested to perform an actuarial analysis on HB 1040 or the amended bill.

5. GRS is a licensed actuary on contract with the State of North Dakota to perform actuarial analyses and performed the actuarial analysis for the original HB 1040 and HB 1040 as amended.

6. GRS's actuarial analysis 2/1/2023 : "*The above discussion suggests that if the plan is closed, (1) it may not be possible to develop a portfolio that earns 6.5% return throughout the life of the plan, and (2) at some point, the asset allocation will be changed and lower returns should be expected. We have included alternate lower investment assumptions of 5.5% and 4.5% in our analysis. There is no way to quantitatively determine the actual closure cost of a defined benefit plan. In reality, the asset allocation would most likely be changed gradually over time and costs will be different than shown for a number of reasons. For example, if we assume an investment return rate of 6.5% for 10 years, 5.5% for the next 10 years, 4.5% for the next 10 years and 3.5% thereafter, the liabilities would be equivalent to assuming an investment return rate of 4.4% for the entire period.*"

Prepared by Pam Sharp
Coalition for Retirement Stability

Comparison of Total Cash Outlays Between SB 2239 and HB 1040

	Senate Bill 2239	**House Bill 1040**
General Fund Transfer	$250,000,000	$0
S.I.I.F Transfer	0	240,000,000
Legacy Earnings Fund	0	630,000,000
State Increased ADEC*	**843,522,478**	**4,668,174,166**
Political Subs Increased ADEC*	936,798,920	
Total Cash Outlays to get to Full Funding	**$2,030,321,398**	**$5,538,174,166**
Approximate Funding Split of State's Increased ADEC		
General Fund	**$421,761,239**	**$2,749,774,166**
Special Funds	320,538,542	1,584,400,000
Federal Funds	101,222,697	334,000,000
	$843,522,478	**$4,668,174,166**

Notes: Return assumption for SB2239 is 6.5% on an open plan.
Return assumption for HB 1040 is 4.5% on a closed plan.
*ADEC = Actuarial Determined Employer Contribution
ADEC numbers provided by GRS, the actuarial firm that performed the actuarial analyses for both SB2239 and HB1040.

Prepared by: Pam Sharp, Coalition for Retirement Stability

Kendal Killian
Executive Director
National Public Pension Coaltion

[Thank you to highway patrol. Stuck in snowbank.]

Every day, public employees get up and serve the people of North Dakota with dignity. They plow the roads, supply children with healthy meals, and oversee essential measures like flood preparedness. They've dedicated their working lives to bettering North Dakota and fostering a nationally recognized high standard of living.

This year, legislators are weighing HB 1040, which will gut public employees' defined-benefit pensions. The bill will harm recruitment and retention, jeopardize public servants' retirement security, and threaten the state's economic stability and, with it, the North Dakota way of life.

Some lawmakers want to spend $5.5 billion over 20 years to destroy the family budgets of devoted nurses and educators. As KFYR-TV has noted, this **$5.5 billion** dollar bill is the **most expensive legislation in state history.**

States like West Virginia made a similar switch and saw the unfunded liability of their pension funds increase significantly, putting active workers' and fixed-income retirees' economic security at risk.

After decades of underfunding, West Virginia closed their teachers' pension system and transitioned to a 401(k)-style system. After a 2005 study, the state reinstated the pension plan. If North Dakota elected officials pass this bill now and then reverse course down the road, future costs to reopen the system would be over and above today’s **$5.5 billion price tag, which is already today the most expensive bill in state history, the equivalent of more than $7,000 for every resident in the state.**

This bill would further undermine North Dakota's ability to retain and recruit essential government workers. This year, Oklahoma and Alaska are considering reopening now-closed pension plans because they are desperately short on public workers, damaging core services like police and fire. Pensions are proven to be a valuable tool in recruiting and, in particular, retaining skilled public servants.

AS we sit here in a hearing about closing a pension system, Alaska is moving in the opposite direction. They made this short-sided choice 15 years ago, and now they regret it. There, legislation is moving quickly that would reintroduce a defined benefit pension. Why? Because they are seriously struggling to recruit public employees. In fact, since they gutted their defined benefit pension system, today, one in five public sector positions go unfilled. The city of Juneau is offering a $40,000 recruitment bonus for bus drivers. The state is paying millions to train teachers, firefighters, and police, only to watch them leave for states with pensions just a few years later.

North Dakota often tops the quality of life charts. Public employees and public employee pensions support this culture. The National Institute of Retirement Security found that in 2020, state and local pensions yielded $598.5 million in total economic output, 3,725 jobs in the state, and $63.8 million in tax revenues. So not only would closing the pension plan cost $5.5 billion (did I mention that would be the most expensive bill in state history? But it would reduce revenues for state and local governments and jeopardize the state's quality of life.

Legislators have a choice. Will you support the workers who maintain the Peace Garden State way of life?

Or will you choose the West Virginia/Oklahoma mimicking, mimicking states that rank near the bottom in the same livability metrics North Dakota now proudly touts?

North Dakota should learn from states that have made these costly mistakes.
HB 1040 is fiscally reckless. It will exasperate the state's already alarming public sector human resource challenges, harm the local economy, and put lives at risk.

As a clause in the North Dakota constitution reminds us, "government is instituted for the protection, security, and benefit of the people."

HB 1040 fails the test on all three.

23.0280.05013
Title.

Prepared by the Legislative Council staff for
Representative Weisz
March 28, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 15, after "a" insert "legislative management"

Page 7, line 22, replace "January 1, 2025" with "July 1, 2023"

Page 7, line 28, replace "December 31, 2024" with "June 30, 2023"

Page 8, line 9, replace "January 1, 2025" with "July 1, 2023"

Page 8, line 29, replace "January 1, 2025" with "July 1, 2023"

Page 8, line 30, replace "December 31, 2024" with "June 30, 2023"

Page 9, line 1, replace "December 31, 2024" with "June 30, 2023"

Page 9, line 14, replace "January 1, 2025" with "July 1, 2023"

Page 9, line 17, replace "December 31, 2024" with "June 30, 2023"

Page 9, line 24, replace "January 1, 2025" with "July 1, 2023"

Page 9, line 27, replace "December 31, 2024" with "June 30, 2023"

Page 10, line 6, replace "December 31, 2024" with "June 30, 2023"

Page 10, line 10, replace "January 1, 2025" with "July 1, 2023"

Page 10, line 13, replace "January 1, 2025" with "July 1, 2023"

Page 10, line 14, replace "December 31, 2024" with "June 30, 2023"

Page 10, line 15, replace "January 1, 2025" with "July 1, 2023"

Page 11, line 1, replace "January 1, 2025" with "July 1, 2023"

Page 16, line 15, replace "December 31, 2024" with "June 30, 2023"

Page 16, line 17, replace "January 1, 2025" with "July 1, 2023"

Page 17, line 24, replace "**December 31, 2024**" with "**June 30, 2023**"

Page 18, line 14, replace "January 1, 2025" with "July 1, 2023"

Page 18, line 22, replace "January 1, 2025" with "July 1, 2023"

Page 21, line 28, replace "December 31, 2024" with "June 30, 2023"

Page 22, line 3, replace "January 1, 2025" with "July 1, 2023"

Page 22, line 13, replace "**December 31, 2024**" with "**June 30, 2023**"

Page 22, line 15, replace "January 1, 2025" with "July 1, 2023"

Page 22, line 16, replace "54-42" with "54-52"

Page 22, line 19, replace "January 1, 2025" with "July 1, 2023"

Page 22, line 20, replace "March 31, 2025" with "September 30, 2023"

Page 23, line 7, replace "January 1, 2025" with "July 1, 2023"

Page 23, line 17, replace "January 2026" with "July 2024"

Page 23, line 17, replace "January 2028" with "July 2026"

Page 24, line 17, replace "January 1, 2025" with "July 1, 2023"

Page 29, after line 28, insert:

"1."

Page 29, line 30, replace "Monthly, the" with:

"a. A"

Page 29, line 31, after "employee" insert "who first joined the defined contribution plan before January 1, 2025,

Page 29, line 31, after "to" insert "fifteen and twenty-six hundredths percent times the temporary employee's present monthly salary.

b. A temporary employee who first joined the defined contribution plan after December 31, 2024, shall contribute an amount equal to"

Page 30, line 2, after the second underscored period insert:

"2."

Page 30, line 19, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 32, line 16, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 32, line 30, after "and" insert "any"

Page 34, line 16, replace ", 3," with "through"

Page 34, line 16, replace "34 and" with "sections 13 and 14, sections 16 through 20, sections 23, 24, 26, and 27, and sections 30 through"

Page 34, line 17, remove "section 2, sections 4 through 10, sections 13 through 24, and sections 26 through"

Page 34, line 18, replace "33" with "sections 15, 21, 22, 28, and 29"

Renumber accordingly

23.0280.05011
Title.

Prepared by the Legislative Council staff for
Representative Weisz
March 27, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 15, after "a" insert "legislative management"

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Page 23, line 17, replace "January 2028" with "July 2026"

Page 24, line 17, replace "January 1, 2025" with "July 1, 2023"

Page 27, line 11, replace "2025" with "2024"

Page 27, line 14, replace "2024" with "2023"

Page 27, line 28, replace "2025" with "2024"

Page 28, line 2, replace "2024" with "2023"

Page 29, after line 28, insert:

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Page 29, line 30, replace "Monthly, the" with:

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Page 29, line 31, after "employee" insert "who first joined the defined contribution plan before January 1, 2024,

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Page 30, line 19, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 32, line 16, after "54-52.6-02" insert "or 54-52.6-02.2"

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Page 34, line 16, replace ", 3," with "through"

Page 34, line 16, replace "34 and" with "sections 13 and 14, sections 16 through 20, sections 23, 24, 26, and 27, and sections 29 through"

Page 34, line 17, remove "section 2, sections 4 through 10, sections 13 through 24, and sections 26 through"

Page 34, line 18, replace "33" with "sections 15, 21, 22, and 28"

Page 34, line 18, replace "2025" with "2024"

Renumber accordingly

Legislative Council

North Dakota Legislative Council

Prepared by the Legislative Council staff
LC# 23.9515.03000
March 2023

REENGROSSED HOUSE BILL NO. 1040 - SUMMARY

This memorandum summarizes House Bill No. 1040 (2023) as reengrossed. In general, the bill provides for closure of the Public Employees Retirement System (PERS) main system defined benefit (DB) plan for new hires; routing of new hires into a defined contribution (DC) plan; an opportunity and incentive for recent hires to elect to participate in the DC plan; a strategic investment and improvements fund transfer to PERS to pay down the unfunded liability on the main system DB plan; funding from the legacy earnings fund to pay down the unfunded liability on the main system DB plan and to cover administrative services; and a Legislative Management study.

CLOSURE OF THE DEFINED BENEFIT PLAN

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

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

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

Employer Contribution

Political Subdivisions

A political subdivision is assessed a 1 percent additional employer contribution effective January 1, 2024.

State

Effective January 1, 2024, the state is assessed a 1 percent additional employer contribution. Effective January 1, 2026, a state employer is required to pay an actuarially determined employer contribution rate that is calculated based on a closed period of 20.5 years. This rate is the amount required to cover both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the plan over 20.5 years. This rate is set in November of each even-numbered year to allow agencies to submit budgets for the upcoming legislative session.

Employee Eligibility

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

DEFINED CONTRIBUTION PLAN

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

Contribution

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

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

Employer Contribution for DB Plan

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

Recent Hires

The bill provides state employees hired in the previous 5 years a one-time opportunity to opt to participate in the DC plan. The employer of a state employee who elects to participate in the DC plan under this provision is directed to pay an additional contribution of $3,333 at the completion of each year the employee remains employed by the state, for a maximum of 3 years.

Plan Design

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

LEGACY EARNINGS FUND

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

STRATEGIC INVESTMENT AND IMPROVEMENTS FUND

The bill provides a $240 million strategic investment and improvements fund transfer to PERS for the 2023-25 biennium for the purpose of reducing the unfunded liability of the PERS main system plan.

LEGISLATIVE MANAGEMENT STUDY

The bill provides for a 2023-24 Legislative Management interim study of the PERS main system plan, including studying funding options and contributions by political subdivisions.

SECTION-BY-SECTION SUMMARY
North Dakota Century Code

Section 1

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

Section 2

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

Section 3

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

Section 4

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

Section 5

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

Section 6

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

Section 7

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

Section 8

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

Section 9

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

Section 10

Section 10 is a housekeeping change.

Section 11

Provides effective January 1, 2024, the employer contribution rates for the DB retirement plan are increased 1 percent for state and political subdivision employers and directs PERS to make annual reports to the Employee Benefits Programs Committee.

Section 12

Provides effective January 1, 2026, the state employer contribution rate for the DB retirement plan is changed to an actuarially determined rate. The rate is amortized over 20.5 years and is based on the PERS fund valuation from the previous even-numbered year.

Section 13

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

Section 14

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

Section 15

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

Section 16

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

Section 17
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan. This does not affect existing nonclassified state employees already participating in the DC plan.

Section 18
Provides except for those employees who already have participated in the DB retirement plan, all new main system plan hires will be routed to participate in the DC retirement plan.

Section 19
Provides a one-time opportunity for recent hires to opt to participate in the DC plan and provides an additional employer contribution for each year the employee remains employed by the state, for up to 3 years.

Section 20
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan.

Section 21
Clarifies PERS shall follow federal guidelines regarding qualified default investment alternatives; directs PERS to provide an investment menu of investment options and, in doing so, meet certain requirements; and requires PERS to use a qualified default investment alternative that includes an in-plan annuity.

Section 22
Directs PERS to select one or more annuity providers to provide annuity options under the DC retirement plan and provides guidelines for PERS to consider in selecting annuity providers to ensure the financial health and stability of the annuity provider.

Section 23
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan.

Section 24
Provides for the employer and employee contribution rates for the DC retirement plan, requiring an employee contribute at least 4 percent of wages and allowing an optional contribution of up to an additional 3 percent. The employer required contribution is 5.26 percent of wages, and matching contributions for any additional contribution made by the employee.

Section 25
Provides a state employer is required to pay an additional contribution based on the actuarially determined employer contribution, less the amount of the employer contribution under Section 23. Additionally, if a state employer uses federal funds to pay any or all of an employee's wages, the employer shall use state funds to pay this additional contribution.

Section 26
Provides a temporary employee may elect to participate in the DC plan.

Section 27
Closes the opportunity for nonclassified state employees to elect to participate in the existing DC retirement plan.

Section 28
Clarifies distribution under the DC plan may include annuities.

Section 29
Directs PERS or its vendor to educate participating members regarding the DC retirement plan.

Section 30
Clarifies the use of the term "deferred member."

Section 31

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

Section 32

Provides a savings clause stating if the PERS Board determines any portion of the DC Plan chapter does not comply with federal law, the board shall adopt necessary terminology, subject to approval by the Employee Benefits Programs Committee. This section mirrors a similar section in Chapter 54-52.

Section 33

Repeals the section that decreases DB plan contributions upon the funds reaching 100 percent funding and the section in the DC plan chapter which allows for the transfer of funds to the DC plan under an obsolete transfer provision.

Special Clauses

Section 34

Provides for a 2023-24 interim study by the Legislative Management.

Section 35

Provides a $240 million strategic investment and improvements fund transfer to PERS for the purpose of reducing the unfunded liability of the PERS main system plan.

Section 36

Clarifies the actuarially determined employer contribution rate applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

Section 37

Provides the legacy fund provisions and the strategic investment and improvements fund transfer become effective July 1, 2023; the closure of the DB retirement plan, routing of new hires into the DC plan, and the one-time opportunity for recent hires to opt into the DC plan portions of the bill become effective January 1, 2025; and the actuarially determined contribution rate portions of the bill become effective January 1, 2026.

23.0280.05021
Title.

Prepared by the Legislative Council staff for
Senator Hogue
April 11, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 5, remove "section 6-09.4-10.1,"

Page 1, line 6, remove "21-10-13,"

Page 1, line 10, remove "and"

Page 1, line 10, after "54-52.6-19" insert ", and 57-51.1-07.5"

Page 1, line 10, remove "a transfer from the"

Page 1, line 11, remove "legacy earnings fund to the public employees retirement system main plan and"

Page 1, line 12, after "plans" insert "and the state share of oil and gas taxes"

Page 1, line 15, after "a" insert "legislative management"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 10

Page 2, remove lines 15 through 30

Page 3, remove lines 1 through 31

Page 4, overstrike lines 1 through 13

Page 13, line 14, remove "two hundred"

Page 13, line 15, replace "forty-six months" with "thirty and one-half years"

Page 13, line 16, replace "2046" with "2056"

Page 22, line 15, replace "January 1, 2025" with "December 31, 2024"

Page 24, line 24, remove "The board shall follow"

Page 24, remove lines 25 through 30

Page 27, line 2, overstrike "shall"

Page 27, line 2, after "promptly" insert "shall"

Page 27, line 11, after the second underscored comma insert "and an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 14, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 28, after the second underscored comma insert "and for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 28, line 2, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 30, line 19, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 32, line 16, after "<u>54-52.6-02</u>" insert "<u>or 54-52.6-02.2</u>"

Page 33, after line 28, insert:

"**SECTION 31. AMENDMENT.** Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.5. State share of oil and gas taxes - Deposits.

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred million dollars into the state general fund;

2. The next two hundred million dollars into the tax relief fund;

3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;

4. The next two hundred million dollars into the state general fund;

5. The next ten million dollars into the lignite research fund;

6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars;

7. The next four hundred million dollars into the strategic investment and improvements fund;

8. <u>The next sixty-five million to the public employees retirement fund;</u>

<u>9.</u> The next fifty-nine million seven hundred fifty thousand dollars, or the amount necessary to provide for twice the amount of the distributions under subsection 2 of section 57-51.1-07.7, into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~9.~~ <u>10.</u> The next one hundred seventy million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~10.~~ <u>11.</u> The next twenty million dollars into the airport infrastructure fund; and

~~11.~~ <u>12.</u> Any additional revenues into the strategic investment and improvements fund."

Page 34, line 9, replace "$240,000,000" with "$135,000,000"

Page 34, line 16, replace "1, 3, 11, 34 and 35" with "9, 31, 33, and 34"

Page 34, line 17, replace "July" with "August"

Page 34, line 17, remove "section 2,"

Page 34, line 17, replace "4" with "1"

Page 34, line 17, replace "10" with "8"

Page 34, line 17, replace "13" with "11"

Page 34, line 17, replace "24" with "22"

Page 34, line 17, replace "26" with "24"

Page 34, line 18, replace "33" with "32"

Page 34, line 18, replace "12, 25, and 36" with "10, 23, and 35"

Renumber accordingly

23.0280.05019
Title.

Prepared by the Legislative Council staff for Senator Cleary
April 6, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 1, remove "54-52.2-09,"

Page 1, line 4, remove ", the deferred compensation program,"

Page 1, line 9, remove "54-52.6-09,"

Page 1, line 9, remove "54-52.6-13,"

Page 1, line 15, after "a" insert "legislative management"

Page 15, remove lines 19 through 30

Page 22, line 16, replace "<u>54-42</u>" with "<u>54-52</u>"

Page 24, line 24, remove "<u>The board shall follow</u>"

Page 24, remove lines 25 through 30

Page 27, remove lines 6 through 30

Page 28, remove lines 1 through 31

Page 29, remove lines 1 through 16

Page 29, line 23, replace "<u>sections 54-52.2-09 and</u>" with "<u>section</u>"

Page 29, line 31, replace "<u>nine</u>" with "<u>fifteen</u>"

Page 30, line 1, remove "<u>, and may elect to contribute up</u>"

Page 30, line 2, remove "<u>to an additional six percent</u>"

Page 30, remove lines 25 through 31

Page 31, remove lines 1 through 30

Page 32, remove lines 1 through 11

Page 34, line 16, replace "34" with "31"

Page 34, line 16, replace "35" with "32"

Page 34, line 17, replace "July" with "August"

Page 34, line 17, replace "24" with "21"

Page 34, line 17, replace "26" with "24"

Page 34, line 18, replace "33" with "30"

Page 34, line 18, replace "25" with "23"

Page 34, line 18, replace "36" with "33"

Renumber accordingly

Members of the Senate Appropriations Committee,

Below is a summary of five amendments I have prepared for HB 1040. If this bill is to become law, there are several portions that should be improved:

1. **This amendment removes the $10k incentive for current employees to switch plans.** The dates are wrong from an IRS compliance perspective — Rep. Weisz, the author of the amendment, has acknowledged this too.
    a. This incentive — along with paying the net present value of the employees defined benefit — would dramatically drive up the costs over the next three years. It also presents a fairness issue to employees who will join the state shortly after its enacted, or employees who have already elected the DC Plan. Additionally, by removing all those people immediately from the Defined Benefit, it's funding level would immediately become even worse.

2. **This amendment clearly states North Dakota has a contract to pay the benefits currently obligated.** While this seems to be agreed upon, it is fairly ambiguous in the NDCC currently.
    a. If 1040 passes, this would be an assurance that we intend to pay the benefits to current public workers and retirees.

3. **This amendment would make it so the default contributions remain 7% from the employee and 8.26% from the employer for the DC plan.** 1040 allows employees to go up to that amount, but the default is lowered to 4% and 5.26%. **This also removes the language that requires an annuity in the plan as the default option.**
    a. The current DC plan has higher default contribution rates for workers, and this results in employees getting their full match and saving 15.26% for retirement. This is what our current plan does and is identified as best-practice by many financial advisors and supporters of 1040.
    b. While an annuity could be a good option for some on the DC plan, this should be an option, not the default.

4. This amendment would strike the provisions that make the state cover the majority of the political subdivisons's portion of the liability.
    a. If political subs are on the retirement plan, they should cover their share of the liability. They represent ~60% of the plan members. Taking on their liability dramatically drives up cost for the state.

5. **This amendment strikes the language related to the Legacy funds stream from 1040.** This may be unnecessary with Senator Hogue's amendment to the 1379. But it would make the bills consistent with one another.
    a. There are trade-offs with eliminating the streams as a funding source. <u>The Legislature would either have to replace that funding somehow or the state will continue to underfund the pension liability.</u> This will impact the actuarial analysis for the fund.

Prepared by Sen. Sean Cleary

23.0280.05008
Title.

Prepared by the Legislative Council staff for
Senator Cleary
March 13, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 2, remove "54-52.6-02.2,"

Page 1, line 2, after the fourth comma insert "and"

Page 1, line 2, remove ", and 54-52.6-23"

Page 1, line 13, replace "sections" with "section"

Page 1, line 13, remove "and 54-52.6-03"

Page 1, line 14, remove "and"

Page 1, line 15, remove "balance transfer when opting to participate in the defined contribution plan"

Page 17, line 24, remove "**through December 31, 2024**"

Page 22, remove lines 11 through 31

Page 23, remove lines 1 through 22

Page 33, remove lines 19 through 28

Page 33, line 29, replace "Sections" with "Section"

Page 33, line 29, remove "and 54-52.6-03"

Page 33, line 30, replace "are" with "is"

Page 34, line 16, replace "34" with "32"

Page 34, line 16, replace "35" with "33"

Page 34, line 17, replace "24" with "23"

Page 34, line 17, replace "26" with "25"

Page 34, line 18, replace "33" with "31"

Page 34, line 18, replace "25" with "24"

Page 34, line 18, replace "36" with "34"

Renumber accordingly

23.0280.05008

Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED HOUSE BILL NO. 1040

Introduced by

Legislative Management

(Retirement Committee)

A BILL for an Act to create and enact sections 54-52-02.15, 54-52.2-09, 54-52.6-02.1, ~~54-52.6-02.2,~~ 54-52.6-05.1, 54-52.6-09.5, 54-52.6-09.6, and 54-52.6-22~~, and 54-52.6-23~~ of the North Dakota Century Code, relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan; to amend and reenact section 6-09.4-10.1, paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3, sections 21-10-13, 54-52-01, 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, subsection 2 of section 54-52-05, sections 54-52-06 and 54-52-14.3, subdivision b of subsection 1 of section 54-52-17.2, and sections 54-52.6-01, 54-52.6-02, 54-52.6-03, 54-52.6-05, 54-52.6-08, 54-52.6-09, 54-52.6-10, 54-52.6-13, 54-52.6-15, and 54-52.6-19 of the North Dakota Century Code, relating to a transfer from the legacy earnings fund to the public employees retirement system main plan and the public employees retirement system defined benefit and defined contribution retirement plans; to repeal ~~sections~~section 54-52-06.5~~ and 54-52.6-03~~ of the North Dakota Century Code, relating to public employees retirement system retirement plan contribution rates upon reaching full funding~~ and balance transfer when opting to participate in the defined contribution plan~~; to provide for a study; to provide for a transfer; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-10.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-10.1. Legacy sinking and interest fund - Debt service requirements - Public finance authority.

There is created in the state treasury the legacy sinking and interest fund. The fund consists of all moneys deposited in the fund under section 21-10-13. Moneys in the fund may be spent

by the public finance authority pursuant to legislative appropriations to meet the debt service requirements for evidences of indebtedness issued by the authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs. ~~Any moneys in the fund in excess of the amounts appropriated from the fund to meet the debt service requirements for a biennium must be transferred by the state treasurer to the public employees retirement system main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and then subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent.~~

SECTION 2. AMENDMENT. Paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

(1) The public employees retirement system<u>, except an "eligible employee" as that term is defined under section 54-52-02.15</u>.

SECTION 3. AMENDMENT. Section 21-10-13 of the North Dakota Century Code is amended and reenacted as follows:

21-10-13. Legacy earnings fund - State treasurer - Transfers.

1. There is created in the state treasury the legacy earnings fund. The fund consists of all moneys transferred to the fund under subsection 2 and all interest and earnings upon moneys in the fund.
2. Any legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota must be immediately transferred by the state treasurer to the legacy earnings fund.
3. For each biennium subsequent to the biennium in which the legacy fund earnings are transferred under subsection 2, the amount available for appropriation from the legacy earnings fund is seven percent of the five-year average value of the legacy fund assets as reported by the state investment board. The average value of the legacy fund assets must be calculated using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.

4. On July first of each odd-numbered year, from the amount available for appropriation or transfer from the legacy earnings fund for the biennium, the state treasurer shall transfer funding in the following order:

   a. The lesser of the first one hundred fifty million dollars or an amount equal to any legislative appropriations to meet the debt service requirements for a biennium for evidences of indebtedness issued by the public finance authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs to the legacy sinking and interest fund under section 6-09.4-10.1.

   b. The next seventy million dollars to the public employees retirement system for administrative expenses for chapters 54-52 and 54-52.6 and for the unfunded liability of the main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent as reported for the most recently completed even-numbered fiscal year.

   c. The next sixty million dollars to the highway tax distribution fund for allocations under section 54-27-19.

   ~~c.~~d. Any remaining funds for other purposes as designated by the legislative assembly, including:

      (1) Up to fifty million dollars for tax relief pursuant to appropriations or transfers authorized by the legislative assembly;

      (2) Up to thirty million dollars to the clean sustainable energy fund pursuant to appropriations or transfers authorized by the legislative assembly; and

      (3) Up to thirty million dollars for university research programs, the innovation loan fund to support technology advancement, and workforce enrichment initiatives pursuant to appropriations or transfers authorized by the legislative assembly.

5. If the amounts transferred under subsection 2 exceed the amount available for appropriation under subsection 3, an amount equal to any appropriations from the legacy sinking and interest fund for bond payments under section 6-09.4-10.1 must be retained in the legacy earnings fund through June 30, 2025, after which an amount equal to twice any appropriations from the legacy sinking and interest fund under section 6-09.4-10.1 for bond payments, but not more than one hundred fifty million dollars, must be retained in the legacy earnings fund. After deducting any amounts to be retained in the legacy earnings fund, the state treasurer shall transfer, within thirty days, any remaining amounts under this subsection in the following order:
   a. The first one hundred million dollars to the legacy fund to become part of the principal.
   b. Any remaining amount to the strategic investment and improvements fund to be used in accordance with the provisions of section 15-08.1-08.

SECTION 4. AMENDMENT. Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52-01. Definition of terms.

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. <u>"Deferred member" means a participating member who is not actively participating in the main plan under this chapter and who has an account intact in the main plan under this chapter.</u>
<u>5.</u> "Eligible employee"<u>, except as otherwise provided under section 54-52-02.15,</u> means ~~all~~<u>a</u> permanent ~~employees~~<u>employee</u> who ~~meet~~<u>meets</u> all of the eligibility requirements set by this chapter and who ~~are~~<u>is</u> eighteen years or more of age~~, and~~<u>. The term</u>

includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. ~~Eligible employee~~The term does not include nonclassified state employees who ~~elect~~elected under section 54-52.6-02 to become members of the retirement plan established under chapter 54-52.6 ~~but~~. The term does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board of higher education.

~~5.~~6. "Employee" means any individual employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

~~6.~~7. "Employer" means a governmental unit.

~~7.~~8. "Firefighter" means a participating member who is employed as a firefighter by a political subdivision and, notwithstanding subsection 13, for an individual employed after July 31, 2017, is employed at least thirty-two hours per week and at least twenty weeks each year of employment. A firefighter who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after July 31, 2017, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system. The term does not include a firefighter employee of the North Dakota national guard.

~~8.~~9. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.

~~9.~~10. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision ~~thereof~~of the state.

~~10.~~11. "National guard security officer or firefighter" means a participating member who is:

a. A security police employee of the North Dakota national guard; or

b. A firefighter employee of the North Dakota national guard.

~~11.~~12. "Participating member" means an eligible employee who through payment into the plan has established a claim against the plan.

~~12.~~13. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 13, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after August 1, 2005, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

~~13.~~14. "Permanent employee" means ~~a governmental unit~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.

~~14.~~15. "Prior service" means service or employment before July 1, 1966.

~~15.~~16. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.

~~16.~~17. "Public employees retirement system" means the retirement plan and program established by this chapter.

~~17.~~18. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan.

~~18.~~19. "Retirement board" or "board" means the governing authority created under section 54-52-03.

~~19.~~20. "Seasonal employee" means a participating member who does not work twelve months a year.

~~20.~~21. "Service" means employment on or after July 1, 1966.

~~21.~~22. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.

~~22.~~23. "Temporary employee" means ~~a governmental unit~~an employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 5. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials.

1. After December 31, 1999, ~~a person~~but before January 1, 2025, an individual elected or appointed to a state office for the first time must, from and after the date that ~~person~~individual qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the defined contribution retirement plan established under chapter 54-52.6.

2. After December 31, 2024, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a

participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.

3. As used in this section, the phrase "for the first time" means ~~a person~~an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that ~~person's~~individual's appointment.

SECTION 6. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

1. ~~Within~~Before January 1, 2025, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to ~~eight~~fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by ~~two~~one percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January ~~2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014~~2025.
2. If the temporary employee first enrolled:
   a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
   b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, 2025, who becomes a permanent employee after December 31, 2024, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.

4. After December 31, 2024, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.

5. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

SECTION 7. AMENDMENT. Section 54-52-02.11 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.11. Participation requirements for nonstate elected officials.

~~Elected~~

1. Before January 1, 2025, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.

2. After December 31, 2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

SECTION 8. AMENDMENT. Section 54-52-02.12 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.12. Participation requirements for nonstate appointed officials.

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, 2025, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.

2. After December 31, 2024, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

SECTION 9. Section 54-52-02.15 of the North Dakota Century Code is created and enacted as follows:

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

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

does not apply to an individual who before January 1, 2025, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.

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

SECTION 10. AMENDMENT. Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Each member must be assessed and required to pay monthly ~~four~~seven percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. ~~Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

SECTION 11. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

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

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered

employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 12. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee.

~~1.~~ ~~Each~~

1. a. As determined by actuarial valuations, each state governmental unit shall contribute to the defined benefit plan an amount ~~equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024~~on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of two hundred forty-six months, beginning January 1, 2026, and continuing through June 30, 2046. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.

   b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.

   c. For a participating member who first enrolls after December 31, 2019, ~~the governmental unit~~a participating political subdivision shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit

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

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

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

SECTION 13. AMENDMENT. Section 54-52-14.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-14.3. Public employee retirement funds - Use and investment.

Any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of ~~that~~the retirement system, including the payment of system administrative costs.

SECTION 14. AMENDMENT. Subdivision b of subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

b. ~~Pursuant~~Subject to section 54-52-02.15 and pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17. A permanent employee or a temporary employee employed before August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

(1) The final average salary as calculated in section 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.

(2) The final average salary as calculated in section 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

SECTION 15. Section 54-52.2-09 of the North Dakota Century Code is created and enacted as follows:

54-52.2-09. Employer match for members of defined contribution retirement plan.

An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, 2024, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.

SECTION 16. AMENDMENT. Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-01. Definition of terms.

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

1. "Board" means the public employees retirement system board.
2. "Deferred member" means ~~a person who elected to receive deferred vested retirement benefits~~an individual who is not actively participating in the main plan under chapter 54-52 who has an account intact in the main plan under chapter 54-52.
3. "Eligible employee" ~~means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan~~, for employees who become participating members after December 31, 2024, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, 2025, the term includes a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services.
4. "Employee" means ~~any person~~an individual employed by ~~the state~~a governmental unit, whose compensation is paid out of ~~state~~the governmental unit's funds, or funds controlled or administered by ~~the state~~a governmental unit or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means ~~the state of North Dakota~~a governmental unit.
6. "Governmental unit" means the state of North Dakota or a participating political subdivision of the state.
7. "Normal retirement date" is determined based on subsection 3 of section 54-52-17.

8. "Participating member" means an eligible employee who ~~elects to participate~~participates in the defined contribution retirement plan established under this chapter.

~~7.~~9. "Permanent employee" means ~~a state~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

~~8.~~10. "Temporary employee" means a governmental unit employee who is not an eligible employee due to not meeting the qualification of being a permanent employee, and who is not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 17. AMENDMENT. Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election ~~through December 31, 2024~~.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written

elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect ~~a person's~~an individual's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before January 1, 2025, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed before January 1, 2025, and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's re-employment and ending upon the expiration of six

months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects under this section to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board of higher education who is eligible to participate in an

alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution retirement plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

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

6. A participating member under this section who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee.

a. The temporary employee electing to participate in the defined contribution retirement plan shall pay ~~monthly to the fund an amount equal to eight and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2~~into the plan as provided under section 54-52.6-09.6.

b. An employer may not pay the temporary employee's contributions.

c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.

8. After December 31, 2024, an eligible employee is no longer allowed to elect participation under this section.

SECTION 18. Section 54-52.6-02.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-02.1. Participation in defined contribution retirement plan.

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, 2025, an eligible employee who is first enrolled shall participate in the defined contribution retirement plan under this chapter.
2. A temporary employee may elect to participate in the defined contribution retirement plan as provided under section 54-52.6-09.6.
3. A county elected official may elect to participate in the defined contribution retirement plan as provided under section 54-52-02.11.
4. A nonstate appointed official shall participate in the defined contribution retirement plan as provided under section 54-52-02.12.

~~**SECTION 19.** Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:~~

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

~~1. As used in this section, "eligible employee" means a permanent state employee who on January 1, 2025, is a participating member of the public employees retirement system main system plan under chapter 54-42, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.~~

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

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

~~b. For an eligible employee who elects to transfer from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the member's account in the defined contribution retirement plan under this chapter. However, if the eligible employee terminates employment before receiving the lump sum transfer under this section, the election made is ineffective and the eligible employee remains a~~

~~member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter.~~

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

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

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

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

SECTION 19. AMENDMENT. Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances.

1. For an individual who elects under section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment ~~prior to~~before receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual

remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

~~1.~~a. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or

~~2.~~b. The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

2. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, and before January 1, 2025, using only the formula contained in subdivision b of subsection ~~2~~1.

SECTION 20. AMENDMENT. Section 54-52.6-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-05. Direction of investments.

1. Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board. The board shall follow federal guidelines for establishing a qualified default investment alternative for contributions made by a participating member who fails to provide explicit investment direction. The qualified default investment alternative must include an in-plan annuity. If a participating member does not elect an investment option upon enrollment into the defined contribution retirement plan, the board shall automatically enroll the participating member into the qualified default investment alternative option.

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

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

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

3. The board shall provide a diversified menu of mutual funds and in-plan lifetime annuity options, either fixed, variable, or a combination of both. In selecting an annuity provider the board shall comply with section 54-52.6-05.1.

SECTION 21. Section 54-52.6-05.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-05.1. Annuity provider - Qualifications.

1. The board shall select one or more annuity providers to provide the annuity options under this chapter.

2. In selecting an annuity provider under this section, the board shall:

   a. Determine whether the annuity provider and the provider's subsidiaries and affiliates have appropriate financial strength and stability at the time of selection and during the term of contract with the board.

      (1) The board may require the provider to provide the board with written representation:

         (a) The provider is in compliance with title 26.1.

         (b) The provider at the time of selection is and for each of the preceding seven years was in compliance and good standing with the insurance commissioner of the provider's domiciliary state and the provider is not operating under an order of rehabilitation or liquidation.

         (c) The provider maintains and has maintained reserves that satisfy the statutory requirements of each state in which the provider does business.

(2) The board may require a provider selected by the board to provide annuities under this chapter to notify the board of a change of circumstances resulting in the provider failing to meet any of the requirements under paragraph 1.

(3) The board must have determined the provider has a claims paying ability rating that meets standards adopted by the board.

b. Determine whether the annuity provider is able to provide contracted rights and benefits to a participating member.

c. Determine whether the costs, including fees and commissions, of the annuity options in relation to the benefits and product features of the annuity options are reasonable.

d. Determine whether the administrative services to be provided under the annuity option are appropriate. At a minimum the administrative services must include periodic reports to the board.

e. Determine whether the annuity provider is experienced in paying lifetime retirement income through annuities offered to public employee defined contribution retirement plans.

f. Determine whether the annuity provider offers a menu of annuity options that meet the following conditions:

(1) The annuity options are suitable for participating members and beneficiaries.

(2) The contract terms and income benefits are clearly stated, based on reasonable assumptions.

(3) The menu of annuity options offers a range of lifetime income options.

(4) If an annuity is a variable annuity, the annuity offers a fixed account option along with a variable option.

g. Determine whether the annuity provider offers objective and participant-specific education and tools to help a participating member understand the appropriate use of annuities as a long-term retirement savings vehicle.

SECTION 22. AMENDMENT. Section 54-52.6-08 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-08. Credit of transfers.

The board shall promptly credit the plan account of a participating member who makes an election under ~~this chapter~~section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

SECTION 23. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. ~~Each~~
   a. A participating member who first joined the defined contribution retirement plan before January 1, 2025, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.
   b. A participating member who first joined the defined contribution retirement plan after December 31, 2024, shall contribute monthly four percent of the monthly salary or wage paid to the participant~~, and this~~. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.
   c. This assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. ~~Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~
2. ~~The~~
   a. For a participating member who first joined the defined contribution retirement plan before January 1, 2025, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.

b. For a participating member who first joined the defined contribution retirement plan after December 31, 2024, the employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1. ~~Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

c. For ~~members~~a participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.

d. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.

e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer

decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

SECTION 24. Section 54-52.6-09.5 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.5. Employer contribution for defined benefit plan.

In addition to the employer contribution under section 54-52.6-09, a state employer shall contribute to the defined benefit retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under section 54-52-06 less the amount of the required employer contribution under sections 54-52.2-09 and 54-52.6-09. If a state employer uses federal funds to pay any or all of an employee's wages, the employer shall use state funds to pay this additional contribution.

SECTION 25. Section 54-52.6-09.6 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.6. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths

percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional six percent. An employer may not pay the temporary employee's contribution. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

SECTION 26. AMENDMENT. Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-10. Vesting.

1. A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:
   ~~1.~~a. Upon completion of two years of service, fifty percent.
   ~~2.~~b. Upon completion of three years of service, seventy-five percent.
   ~~3.~~c. Upon completion of four years of service, one hundred percent.
2. A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan ~~pursuant to this chapter~~under section 54-52.6-02 must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

SECTION 27. AMENDMENT. Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that ~~person's~~individual's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant to the

deceased participant's refund beneficiary, if any, as provided in this subsection. If the deceased participant designated an alternate refund beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subdivision d of subsection 3.

3. a. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:

~~a.~~ (1) A lump sum distribution to the recipient.

~~b.~~ (2) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

~~c.~~ (3) Periodic distributions, including annuities, as authorized by the board.

~~d.~~ (4) No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

b. A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in ~~subdivisions a, b, or c~~paragraph 1, 2, or 3 of subdivision a if the surviving spouse is the sole refund beneficiary. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than one thousand dollars, the board ~~shall~~ automatically shall refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 28. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

1. The board shall provide information to employees who are eligible under section 54-52.6-02 to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter.

2. The board, or the board's vendor, shall provide to participating members:

   a. Enrollment information that includes benefits of the defined contribution retirement plan, investment options available, the assumption of risk, and administrative and investment costs.

   b. Ongoing investment and retirement income planning, including education on how to set, measure, and adjust income and saving goals based on desired retirement income and financial objectives, actual behavior, and changing circumstances.

   c. Retirement income education, including distribution options available and in-plan annuitization options.

d. Advice and guidance information, tools, and services primarily focused on long-term planning and investing and life events that potentially influence and impact retirement savings.

3. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

SECTION 29. AMENDMENT. Section 54-52.6-19 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-19. Overpayments.

The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member under this chapter, refund beneficiary, or other person ~~who~~that has a claim to a distribution or any other benefit from a plan governed by this chapter.

SECTION 30. Section 54-52.6-22 of the North Dakota Century Code is created and enacted as follows:

54-52.6-22. Report to employee benefits programs committee.

Annually, the board shall provide a report to the employee benefits programs committee on the status of the defined contribution retirement plan under this chapter.

~~**SECTION 32.** Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:~~

~~**54-52.6-23. Savings clause - Plan modification.**~~

~~If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.~~

SECTION 31. REPEAL. ~~Sections~~Section 54-52-06.5 ~~and 54-52.6-03~~ of the North Dakota Century Code ~~are~~is repealed.

SECTION 32. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN. During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 33. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND. The office of management and budget shall transfer $240,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 34. APPLICATION. Subdivision a of subsection 1 of section 54-52-06, as amended under section 12 of this Act, applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

SECTION 35. EFFECTIVE DATE. Sections 1, 3, 11, ~~34~~32 and ~~35~~33 of this Act become effective July 1, 2023; section 2, sections 4 through 10, sections 13 through ~~24~~23, and sections ~~26~~25 through ~~33~~31 of this Act become effective January 1, 2025; and sections 12, ~~25~~24, and ~~36~~34 of this Act become effective January 1, 2026.

23.0280.05009
Title.

Prepared by the Legislative Council staff for
Senator Cleary
March 13, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 13, after "54-52-06.5" insert ", 54-52-22,"

Page 1, line 14, after "funding" insert ", interpretation of the public employees retirement system retirement laws,"

Page 14, line 25, after "**54-52-14.3**" insert "**Contract -**"

Page 14, line 26, overstrike "Any" and insert immediately thereafter:

"1. An employee has a contract with the employer for purposes of retirement plan obligations arising out of a public employee retirement system under this chapter. A"

Page 14, line 28, after the period insert "This subsection does not prevent the state from increasing or decreasing employee or employer contribution rates for a public employee retirement system under this chapter.

2."

Page 33, line 29, after "54-52-06.5" insert ", 54-52-22,"

Renumber accordingly

23.0280.05009

SECOND ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1040

Introduced by

Legislative Management

(Retirement Committee)

A BILL for an Act to create and enact sections 54-52-02.15, 54-52.2-09, 54-52.6-02.1, 54-52.6-02.2, 54-52.6-05.1, 54-52.6-09.5, 54-52.6-09.6, 54-52.6-22, and 54-52.6-23 of the North Dakota Century Code, relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan; to amend and reenact section 6-09.4-10.1, paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3, sections 21-10-13, 54-52-01, 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, subsection 2 of section 54-52-05, sections 54-52-06 and 54-52-14.3, subdivision b of subsection 1 of section 54-52-17.2, and sections 54-52.6-01, 54-52.6-02, 54-52.6-03, 54-52.6-05, 54-52.6-08, 54-52.6-09, 54-52.6-10, 54-52.6-13, 54-52.6-15, and 54-52.6-19 of the North Dakota Century Code, relating to a transfer from the legacy earnings fund to the public employees retirement system main plan and the public employees retirement system defined benefit and defined contribution retirement plans; to repeal sections 54-52-06.5, 54-52-22, and 54-52.6-03 of the North Dakota Century Code, relating to public employees retirement system retirement plan contribution rates upon reaching full funding, interpretation of the public employees retirement system retirement laws, and balance transfer when opting to participate in the defined contribution plan; to provide for a study; to provide for a transfer; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-10.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-10.1. Legacy sinking and interest fund - Debt service requirements - Public finance authority.

There is created in the state treasury the legacy sinking and interest fund. The fund consists of all moneys deposited in the fund under section 21-10-13. Moneys in the fund may be spent

by the public finance authority pursuant to legislative appropriations to meet the debt service requirements for evidences of indebtedness issued by the authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs. ~~Any moneys in the fund in excess of the amounts appropriated from the fund to meet the debt service requirements for a biennium must be transferred by the state treasurer to the public employees retirement system main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and then subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent.~~

SECTION 2. AMENDMENT. Paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

(1) The public employees retirement system, except an "eligible employee" as that term is defined under section 54-52-02.15.

SECTION 3. AMENDMENT. Section 21-10-13 of the North Dakota Century Code is amended and reenacted as follows:

21-10-13. Legacy earnings fund - State treasurer - Transfers.

1. There is created in the state treasury the legacy earnings fund. The fund consists of all moneys transferred to the fund under subsection 2 and all interest and earnings upon moneys in the fund.
2. Any legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota must be immediately transferred by the state treasurer to the legacy earnings fund.
3. For each biennium subsequent to the biennium in which the legacy fund earnings are transferred under subsection 2, the amount available for appropriation from the legacy earnings fund is seven percent of the five-year average value of the legacy fund assets as reported by the state investment board. The average value of the legacy fund assets must be calculated using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.

4. On July first of each odd-numbered year, from the amount available for appropriation or transfer from the legacy earnings fund for the biennium, the state treasurer shall transfer funding in the following order:

   a. The lesser of the first one hundred fifty million dollars or an amount equal to any legislative appropriations to meet the debt service requirements for a biennium for evidences of indebtedness issued by the public finance authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs to the legacy sinking and interest fund under section 6-09.4-10.1.

   b. The next seventy million dollars to the public employees retirement system for administrative expenses for chapters 54-52 and 54-52.6 and for the unfunded liability of the main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent as reported for the most recently completed even-numbered fiscal year.

   c. The next sixty million dollars to the highway tax distribution fund for allocations under section 54-27-19.

   ~~c.~~d. Any remaining funds for other purposes as designated by the legislative assembly, including:

      (1) Up to fifty million dollars for tax relief pursuant to appropriations or transfers authorized by the legislative assembly;

      (2) Up to thirty million dollars to the clean sustainable energy fund pursuant to appropriations or transfers authorized by the legislative assembly; and

      (3) Up to thirty million dollars for university research programs, the innovation loan fund to support technology advancement, and workforce enrichment initiatives pursuant to appropriations or transfers authorized by the legislative assembly.

5. If the amounts transferred under subsection 2 exceed the amount available for appropriation under subsection 3, an amount equal to any appropriations from the legacy sinking and interest fund for bond payments under section 6-09.4-10.1 must be retained in the legacy earnings fund through June 30, 2025, after which an amount equal to twice any appropriations from the legacy sinking and interest fund under section 6-09.4-10.1 for bond payments, but not more than one hundred fifty million dollars, must be retained in the legacy earnings fund. After deducting any amounts to be retained in the legacy earnings fund, the state treasurer shall transfer, within thirty days, any remaining amounts under this subsection in the following order:
    a. The first one hundred million dollars to the legacy fund to become part of the principal.
    b. Any remaining amount to the strategic investment and improvements fund to be used in accordance with the provisions of section 15-08.1-08.

SECTION 4. AMENDMENT. Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52-01. Definition of terms.

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. "Deferred member" means a participating member who is not actively participating in the main plan under this chapter and who has an account intact in the main plan under this chapter.
5. "Eligible employee", except as otherwise provided under section 54-52-02.15, means ~~all~~a permanent ~~employees~~employee who ~~meet~~meets all of the eligibility requirements set by this chapter and who ~~are~~is eighteen years or more of age~~, and~~. The term

includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. ~~Eligible employee~~<u>The term</u> does not include nonclassified state employees who ~~elect~~<u>elected under section 54-52.6-02</u> to become members of the retirement plan established under chapter 54-52.6 ~~but~~<u>. The term</u> does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board <u>of higher education</u>.

~~5.~~<u>6.</u> "Employee" means any individual employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

~~6.~~<u>7.</u> "Employer" means a governmental unit.

~~7.~~<u>8.</u> "Firefighter" means a participating member who is employed as a firefighter by a political subdivision and, notwithstanding subsection 13, for an individual employed after July 31, 2017, is employed at least thirty-two hours per week and at least twenty weeks each year of employment. A firefighter who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after July 31, 2017, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system. The term does not include a firefighter employee of the North Dakota national guard.

~~8.~~<u>9.</u> "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.

~~9.~~10. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision ~~thereof~~of the state.

~~10.~~11. "National guard security officer or firefighter" means a participating member who is:

a. A security police employee of the North Dakota national guard; or

b. A firefighter employee of the North Dakota national guard.

~~11.~~12. "Participating member" means an eligible employee who through payment into the plan has established a claim against the plan.

~~12.~~13. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 13, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after August 1, 2005, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

~~13.~~14. "Permanent employee" means ~~a governmental unit~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.

~~14.~~15. "Prior service" means service or employment before July 1, 1966.

~~15.~~16. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.

~~16.~~17. "Public employees retirement system" means the retirement plan and program established by this chapter.

~~17.~~18. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan.

~~18.~~19. "Retirement board" or "board" means the governing authority created under section 54-52-03.

~~19.~~20. "Seasonal employee" means a participating member who does not work twelve months a year.

~~20.~~21. "Service" means employment on or after July 1, 1966.

~~21.~~22. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.

~~22.~~23. "Temporary employee" means ~~a governmental unit~~an employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 5. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials.

1. After December 31, 1999, ~~a person~~but before January 1, 2025, an individual elected or appointed to a state office for the first time must, from and after the date that ~~person~~individual qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the defined contribution retirement plan established under chapter 54-52.6.

2. After December 31, 2024, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a

participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.

3. As used in this section, the phrase "for the first time" means ~~a person~~an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that ~~person's~~individual's appointment.

SECTION 6. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

1. ~~Within~~Before January 1, 2025, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to ~~eight~~fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by ~~two~~one percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January ~~2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014~~2025.
2. If the temporary employee first enrolled:
   a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
   b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, 2025, who becomes a permanent employee after December 31, 2024, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.

4. After December 31, 2024, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.

5. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

SECTION 7. AMENDMENT. Section 54-52-02.11 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.11. Participation requirements for nonstate elected officials.

~~Elected~~

1. Before January 1, 2025, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.

2. After December 31, 2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

SECTION 8. AMENDMENT. Section 54-52-02.12 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.12. Participation requirements for nonstate appointed officials.

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, 2025, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.

2. After December 31, 2024, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

SECTION 9. Section 54-52-02.15 of the North Dakota Century Code is created and enacted as follows:

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

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

does not apply to an individual who before January 1, 2025, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.

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

SECTION 10. AMENDMENT. Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Each member must be assessed and required to pay monthly ~~four~~seven percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. ~~Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

SECTION 11. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

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

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered

employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 12. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee.

~~1.~~ ~~Each~~

1. a. As determined by actuarial valuations, each state governmental unit shall contribute to the defined benefit plan an amount ~~equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024~~on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of two hundred forty-six months, beginning January 1, 2026, and continuing through June 30, 2046. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.

   b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.

   c. For a participating member who first enrolls after December 31, 2019, ~~the governmental unit~~a participating political subdivision shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit

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

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

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

SECTION 13. AMENDMENT. Section 54-52-14.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-14.3. Contract - Public employee retirement funds - Use and investment.

~~Any~~

1. An employee has a contract with the employer for purposes of retirement plan obligations arising out of a public employee retirement system under this chapter. A provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. This subsection does not prevent the state

from increasing or decreasing employee or employer contribution rates for a public employee retirement system under this chapter.

2. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of ~~that~~the retirement system, including the payment of system administrative costs.

SECTION 14. AMENDMENT. Subdivision b of subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

b. ~~Pursuant~~Subject to section 54-52-02.15 and pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17. A permanent employee or a temporary employee employed before August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

(1) The final average salary as calculated in section 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.

(2) The final average salary as calculated in section 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

SECTION 15. Section 54-52.2-09 of the North Dakota Century Code is created and enacted as follows:

54-52.2-09. Employer match for members of defined contribution retirement plan.

An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, 2024, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of

<u>contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.</u>

SECTION 16. AMENDMENT. Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-01. Definition of terms.

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

1. "Board" means the public employees retirement system board.
2. "Deferred member" means ~~a person who elected to receive deferred vested retirement benefits~~<u>an individual who is not actively participating in the main plan</u> under chapter 54-52 <u>who has an account intact in the main plan under chapter 54-52</u>.
3. "Eligible employee" ~~means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan~~<u>, for employees who become participating members after December 31, 2024, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, 2025, the term includes a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services</u>.
4. "Employee" means ~~any person~~<u>an individual</u> employed by ~~the state~~<u>a governmental unit</u>, whose compensation is paid out of ~~state~~<u>the governmental unit's</u> funds, or funds controlled or administered by ~~the state~~<u>a governmental unit</u> or paid by the federal government through any of its executive or administrative officials.

5. "Employer" means ~~the state of North Dakota~~a governmental unit.

6. "Governmental unit" means the state of North Dakota or a participating political subdivision of the state.

7. "Normal retirement date" is determined based on subsection 3 of section 54-52-17.

8. "Participating member" means an eligible employee who ~~elects to participate~~participates in the defined contribution retirement plan established under this chapter.

~~7.~~9. "Permanent employee" means ~~a state~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

~~8.~~10. "Temporary employee" means a governmental unit employee who is not an eligible employee due to not meeting the qualification of being a permanent employee, and who is not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 17. AMENDMENT. Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election through December 31, 2024.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution

retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect ~~a person's~~an individual's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before January 1, 2025, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed before January 1, 2025, and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the

defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's re-employment and ending upon the expiration of six months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects <u>under this section</u> to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter

becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board <u>of higher education</u> who is eligible to participate in an alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution <u>retirement</u> plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

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

6. A participating member under this section who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee.

   a. The temporary employee electing to participate in the defined contribution retirement plan shall pay ~~monthly to the fund an amount equal to eight and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2~~into the plan as provided under section 54-52.6-09.6.

   b. An employer may not pay the temporary employee's contributions.

   c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the

employer are required to make any future retirement contributions on behalf of that employee.

8. After December 31, 2024, an eligible employee is no longer allowed to elect participation under this section.

SECTION 18. Section 54-52.6-02.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-02.1. Participation in defined contribution retirement plan.

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, 2025, an eligible employee who is first enrolled shall participate in the defined contribution retirement plan under this chapter.
2. A temporary employee may elect to participate in the defined contribution retirement plan as provided under section 54-52.6-09.6.
3. A county elected official may elect to participate in the defined contribution retirement plan as provided under section 54-52-02.11.
4. A nonstate appointed official shall participate in the defined contribution retirement plan as provided under section 54-52-02.12.

SECTION 19. Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:

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

1. As used in this section, "eligible employee" means a permanent state employee who on January 1, 2025, is a participating member of the public employees retirement system main system plan under chapter 54-42, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.
2. The board shall provide a three-month election period, from January 1, 2025, through March 31, 2025, for an eligible employee to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board.
    a. An election under this section made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable.

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

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

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

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

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

SECTION 20. AMENDMENT. Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances.

1. For an individual who elects under section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment ~~prior to~~before receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

   ~~1.~~a. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or

   ~~2.~~b. The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

2. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, and before January 1, 2025, using only the formula contained in subdivision b of subsection ~~2~~1.

SECTION 21. AMENDMENT. Section 54-52.6-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-05. Direction of investments.

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

federal guidelines for establishing a qualified default investment alternative for contributions made by a participating member who fails to provide explicit investment direction. The qualified default investment alternative must include an in-plan annuity. If a participating member does not elect an investment option upon enrollment into the defined contribution retirement plan, the board shall automatically enroll the participating member into the qualified default investment alternative option.

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

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

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

3. The board shall provide a diversified menu of mutual funds and in-plan lifetime annuity options, either fixed, variable, or a combination of both. In selecting an annuity provider the board shall comply with section 54-52.6-05.1.

SECTION 22. Section 54-52.6-05.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-05.1. Annuity provider - Qualifications.

1. The board shall select one or more annuity providers to provide the annuity options under this chapter.

2. In selecting an annuity provider under this section, the board shall:

   a. Determine whether the annuity provider and the provider's subsidiaries and affiliates have appropriate financial strength and stability at the time of selection and during the term of contract with the board.

      (1) The board may require the provider to provide the board with written representation:

         (a) The provider is in compliance with title 26.1.

         (b) The provider at the time of selection is and for each of the preceding seven years was in compliance and good standing with the insurance commissioner of the provider's domiciliary state and the provider is not operating under an order of rehabilitation or liquidation.

(c) The provider maintains and has maintained reserves that satisfy the statutory requirements of each state in which the provider does business.

(2) The board may require a provider selected by the board to provide annuities under this chapter to notify the board of a change of circumstances resulting in the provider failing to meet any of the requirements under paragraph 1.

(3) The board must have determined the provider has a claims paying ability rating that meets standards adopted by the board.

b. Determine whether the annuity provider is able to provide contracted rights and benefits to a participating member.

c. Determine whether the costs, including fees and commissions, of the annuity options in relation to the benefits and product features of the annuity options are reasonable.

d. Determine whether the administrative services to be provided under the annuity option are appropriate. At a minimum the administrative services must include periodic reports to the board.

e. Determine whether the annuity provider is experienced in paying lifetime retirement income through annuities offered to public employee defined contribution retirement plans.

f. Determine whether the annuity provider offers a menu of annuity options that meet the following conditions:

(1) The annuity options are suitable for participating members and beneficiaries.

(2) The contract terms and income benefits are clearly stated, based on reasonable assumptions.

(3) The menu of annuity options offers a range of lifetime income options.

(4) If an annuity is a variable annuity, the annuity offers a fixed account option along with a variable option.

g. Determine whether the annuity provider offers objective and participant-specific education and tools to help a participating member understand the appropriate use of annuities as a long-term retirement savings vehicle.

SECTION 23. AMENDMENT. Section 54-52.6-08 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-08. Credit of transfers.

The board shall promptly credit the plan account of a participating member who makes an election under ~~this chapter~~section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

SECTION 24. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. ~~Each~~

   a. A participating member who first joined the defined contribution retirement plan before January 1, 2025, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.

   b. A participating member who first joined the defined contribution retirement plan after December 31, 2024, shall contribute monthly four percent of the monthly salary or wage paid to the participant~~, and this~~. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.

   c. This assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. ~~Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

2. ~~The~~

a. For a participating member who first joined the defined contribution retirement plan before January 1, 2025, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.

b. For a participating member who first joined the defined contribution retirement plan after December 31, 2024, the employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1. ~~Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

c. For ~~members~~a participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.

d. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.

e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

SECTION 25. Section 54-52.6-09.5 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.5. Employer contribution for defined benefit plan.

In addition to the employer contribution under section 54-52.6-09, a state employer shall contribute to the defined benefit retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under section 54-52-06 less the amount of the required employer contribution under sections 54-52.2-09 and 54-52.6-09. If a state employer uses federal funds to pay any or all of an employee's wages, the employer shall use state funds to pay this additional contribution.

SECTION 26. Section 54-52.6-09.6 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.6. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional six percent. An employer may not pay the temporary employee's contribution. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

SECTION 27. AMENDMENT. Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-10. Vesting.

1. A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:
   ~~1.~~a. Upon completion of two years of service, fifty percent.
   ~~2.~~b. Upon completion of three years of service, seventy-five percent.
   ~~3.~~c. Upon completion of four years of service, one hundred percent.
2. A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan ~~pursuant to this chapter~~under section 54-52.6-02 must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

SECTION 28. AMENDMENT. Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that ~~person's~~individual's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's refund beneficiary, if any, as provided in this subsection. If the deceased participant designated an alternate refund beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subdivision d of subsection 3.
3. a. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:

   ~~a.~~ (1) A lump sum distribution to the recipient.

~~b.~~ (2) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

~~c.~~ (3) Periodic distributions, including annuities, as authorized by the board.

~~d.~~ (4) No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

b. A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in ~~subdivisions a, b, or c~~paragraph 1, 2, or 3 of subdivision a if the surviving spouse is the sole refund beneficiary. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than one thousand dollars, the board ~~shall~~ automatically shall refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 29. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

1. The board shall provide information to employees who are eligible under section 54-52.6-02 to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter.

2. The board, or the board's vendor, shall provide to participating members:

a. Enrollment information that includes benefits of the defined contribution retirement plan, investment options available, the assumption of risk, and administrative and investment costs.

b. Ongoing investment and retirement income planning, including education on how to set, measure, and adjust income and saving goals based on desired retirement income and financial objectives, actual behavior, and changing circumstances.

c. Retirement income education, including distribution options available and in-plan annuitization options.

d. Advice and guidance information, tools, and services primarily focused on long-term planning and investing and life events that potentially influence and impact retirement savings.

3. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

SECTION 30. AMENDMENT. Section 54-52.6-19 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-19. Overpayments.

The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member under this chapter, refund beneficiary, or other person ~~who~~that has a claim to a distribution or any other benefit from a plan governed by this chapter.

SECTION 31. Section 54-52.6-22 of the North Dakota Century Code is created and enacted as follows:

54-52.6-22. Report to employee benefits programs committee.

Annually, the board shall provide a report to the employee benefits programs committee on the status of the defined contribution retirement plan under this chapter.

SECTION 32. Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:

54-52.6-23. Savings clause - Plan modification.

If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 33. REPEAL. Sections 54-52-06.5, 54-52-22, and 54-52.6-03 of the North Dakota Century Code are repealed.

SECTION 34. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN. During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 35. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND. The office of management and budget shall transfer $240,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 36. APPLICATION. Subdivision a of subsection 1 of section 54-52-06, as amended under section 12 of this Act, applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

SECTION 37. EFFECTIVE DATE. Sections 1, 3, 11, 34 and 35 of this Act become effective July 1, 2023; section 2, sections 4 through 10, sections 13 through 24, and sections 26 through 33 of this Act become effective January 1, 2025; and sections 12, 25, and 36 of this Act become effective January 1, 2026.

23.0280.05019

Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED HOUSE BILL NO. 1040

Introduced by

Legislative Management

(Retirement Committee)

A BILL for an Act to create and enact sections 54-52-02.15, ~~54-52.2-09,~~ 54-52.6-02.1, 54-52.6-02.2, 54-52.6-05.1, 54-52.6-09.5, 54-52.6-09.6, 54-52.6-22, and 54-52.6-23 of the North Dakota Century Code, relating to the closure of the public employees retirement system main plan~~, the deferred compensation program,~~ and expansion of the defined contribution retirement plan; to amend and reenact section 6-09.4-10.1, paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3, sections 21-10-13, 54-52-01, 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, subsection 2 of section 54-52-05, sections 54-52-06 and 54-52-14.3, subdivision b of subsection 1 of section 54-52-17.2, and sections 54-52.6-01, 54-52.6-02, 54-52.6-03, 54-52.6-05, 54-52.6-08, ~~54-52.6-09,~~ 54-52.6-10, ~~54-52.6-13,~~ 54-52.6-15, and 54-52.6-19 of the North Dakota Century Code, relating to a transfer from the legacy earnings fund to the public employees retirement system main plan and the public employees retirement system defined benefit and defined contribution retirement plans; to repeal sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code, relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan; to provide for a legislative management study; to provide for a transfer; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-10.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-10.1. Legacy sinking and interest fund - Debt service requirements - Public finance authority.

There is created in the state treasury the legacy sinking and interest fund. The fund consists of all moneys deposited in the fund under section 21-10-13. Moneys in the fund may be spent

by the public finance authority pursuant to legislative appropriations to meet the debt service requirements for evidences of indebtedness issued by the authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs. ~~Any moneys in the fund in excess of the amounts appropriated from the fund to meet the debt service requirements for a biennium must be transferred by the state treasurer to the public employees retirement system main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and then subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent.~~

SECTION 2. AMENDMENT. Paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

(1) The public employees retirement system, except an "eligible employee" as that term is defined under section 54-52-02.15.

SECTION 3. AMENDMENT. Section 21-10-13 of the North Dakota Century Code is amended and reenacted as follows:

21-10-13. Legacy earnings fund - State treasurer - Transfers.

1. There is created in the state treasury the legacy earnings fund. The fund consists of all moneys transferred to the fund under subsection 2 and all interest and earnings upon moneys in the fund.
2. Any legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota must be immediately transferred by the state treasurer to the legacy earnings fund.
3. For each biennium subsequent to the biennium in which the legacy fund earnings are transferred under subsection 2, the amount available for appropriation from the legacy earnings fund is seven percent of the five-year average value of the legacy fund assets as reported by the state investment board. The average value of the legacy fund assets must be calculated using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.

4. On July first of each odd-numbered year, from the amount available for appropriation or transfer from the legacy earnings fund for the biennium, the state treasurer shall transfer funding in the following order:

   a. The lesser of the first one hundred fifty million dollars or an amount equal to any legislative appropriations to meet the debt service requirements for a biennium for evidences of indebtedness issued by the public finance authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs to the legacy sinking and interest fund under section 6-09.4-10.1.

   b. The next seventy million dollars to the public employees retirement system for administrative expenses for chapters 54-52 and 54-52.6 and for the unfunded liability of the main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent as reported for the most recently completed even-numbered fiscal year.

   c. The next sixty million dollars to the highway tax distribution fund for allocations under section 54-27-19.

   ~~c.~~d. Any remaining funds for other purposes as designated by the legislative assembly, including:

      (1) Up to fifty million dollars for tax relief pursuant to appropriations or transfers authorized by the legislative assembly;

      (2) Up to thirty million dollars to the clean sustainable energy fund pursuant to appropriations or transfers authorized by the legislative assembly; and

      (3) Up to thirty million dollars for university research programs, the innovation loan fund to support technology advancement, and workforce enrichment initiatives pursuant to appropriations or transfers authorized by the legislative assembly.

5. If the amounts transferred under subsection 2 exceed the amount available for appropriation under subsection 3, an amount equal to any appropriations from the legacy sinking and interest fund for bond payments under section 6-09.4-10.1 must be retained in the legacy earnings fund through June 30, 2025, after which an amount equal to twice any appropriations from the legacy sinking and interest fund under section 6-09.4-10.1 for bond payments, but not more than one hundred fifty million dollars, must be retained in the legacy earnings fund. After deducting any amounts to be retained in the legacy earnings fund, the state treasurer shall transfer, within thirty days, any remaining amounts under this subsection in the following order:
   a. The first one hundred million dollars to the legacy fund to become part of the principal.
   b. Any remaining amount to the strategic investment and improvements fund to be used in accordance with the provisions of section 15-08.1-08.

SECTION 4. AMENDMENT. Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52-01. Definition of terms.

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. "Deferred member" means a participating member who is not actively participating in the main plan under this chapter and who has an account intact in the main plan under this chapter.
5. "Eligible employee", except as otherwise provided under section 54-52-02.15, means ~~all~~a permanent ~~employees~~employee who ~~meet~~meets all of the eligibility requirements set by this chapter and who ~~are~~is eighteen years or more of age~~, and~~. The term

includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. ~~Eligible employee~~The term does not include nonclassified state employees who ~~elect~~elected under section 54-52.6-02 to become members of the retirement plan established under chapter 54-52.6 ~~but~~. The term does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board of higher education.

~~5.~~6. "Employee" means any individual employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

~~6.~~7. "Employer" means a governmental unit.

~~7.~~8. "Firefighter" means a participating member who is employed as a firefighter by a political subdivision and, notwithstanding subsection 13, for an individual employed after July 31, 2017, is employed at least thirty-two hours per week and at least twenty weeks each year of employment. A firefighter who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after July 31, 2017, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system. The term does not include a firefighter employee of the North Dakota national guard.

~~8.~~9. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.

~~9.~~10. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision ~~thereof~~of the state.

~~10.~~11. "National guard security officer or firefighter" means a participating member who is:

a. A security police employee of the North Dakota national guard; or

b. A firefighter employee of the North Dakota national guard.

~~11.~~12. "Participating member" means an eligible employee who through payment into the plan has established a claim against the plan.

~~12.~~13. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 13, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after August 1, 2005, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

~~13.~~14. "Permanent employee" means ~~a governmental unit~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.

~~14.~~15. "Prior service" means service or employment before July 1, 1966.

~~15.~~16. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.

~~16.~~17. "Public employees retirement system" means the retirement plan and program established by this chapter.

~~17.~~18. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan.

~~18.~~19. "Retirement board" or "board" means the governing authority created under section 54-52-03.

~~19.~~20. "Seasonal employee" means a participating member who does not work twelve months a year.

~~20.~~21. "Service" means employment on or after July 1, 1966.

~~21.~~22. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.

~~22.~~23. "Temporary employee" means ~~a governmental unit~~an employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 5. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials.

1. After December 31, 1999, ~~a person~~but before January 1, 2025, an individual elected or appointed to a state office for the first time must, from and after the date that ~~person~~individual qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the defined contribution retirement plan established under chapter 54-52.6.

2. After December 31, 2024, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a

participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.

3. As used in this section, the phrase "for the first time" means ~~a person~~an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that ~~person's~~individual's appointment.

SECTION 6. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

1. ~~Within~~Before January 1, 2025, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to ~~eight~~fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by ~~two~~one percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January ~~2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014~~2025.
2. If the temporary employee first enrolled:
   a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
   b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, 2025, who becomes a permanent employee after December 31, 2024, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.

4. After December 31, 2024, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.

5. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

SECTION 7. AMENDMENT. Section 54-52-02.11 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.11. Participation requirements for nonstate elected officials.

~~Elected~~

1. Before January 1, 2025, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.

2. After December 31, 2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

SECTION 8. AMENDMENT. Section 54-52-02.12 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.12. Participation requirements for nonstate appointed officials.

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, 2025, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.

2. After December 31, 2024, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

SECTION 9. Section 54-52-02.15 of the North Dakota Century Code is created and enacted as follows:

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

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

does not apply to an individual who before January 1, 2025, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.

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

SECTION 10. AMENDMENT. Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Each member must be assessed and required to pay monthly ~~four~~seven percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. ~~Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

SECTION 11. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

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

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered

employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 12. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee.

~~1.~~ ~~Each~~

1. a. As determined by actuarial valuations, each state governmental unit shall contribute to the defined benefit plan an amount ~~equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024~~on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of two hundred forty-six months, beginning January 1, 2026, and continuing through June 30, 2046. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.

   b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.

   c. For a participating member who first enrolls after December 31, 2019, ~~the governmental unit~~a participating political subdivision shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit

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

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

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

SECTION 13. AMENDMENT. Section 54-52-14.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-14.3. Public employee retirement funds - Use and investment.

Any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of ~~that~~the retirement system, including the payment of system administrative costs.

SECTION 14. AMENDMENT. Subdivision b of subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

b. ~~Pursuant~~Subject to section 54-52-02.15 and pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17. A permanent employee or a temporary employee employed before August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

(1) The final average salary as calculated in section 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.

(2) The final average salary as calculated in section 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

~~**SECTION 15.** Section 54-52.2-09 of the North Dakota Century Code is created and enacted as follows:~~

~~**54-52.2-09. Employer match for members of defined contribution retirement plan.**~~

~~An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, 2024, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.~~

SECTION 15. AMENDMENT. Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-01. Definition of terms.

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

1. "Board" means the public employees retirement system board.
2. "Deferred member" means ~~a person who elected to receive deferred vested retirement benefits~~an individual who is not actively participating in the main plan under chapter 54-52 who has an account intact in the main plan under chapter 54-52.
3. "Eligible employee" ~~means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan~~, for employees who become participating members after December 31, 2024, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, 2025, the term includes a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services.
4. "Employee" means ~~any person~~an individual employed by ~~the state~~a governmental unit, whose compensation is paid out of ~~state~~the governmental unit's funds, or funds controlled or administered by ~~the state~~a governmental unit or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means ~~the state of North Dakota~~a governmental unit.
6. "Governmental unit" means the state of North Dakota or a participating political subdivision of the state.
7. "Normal retirement date" is determined based on subsection 3 of section 54-52-17.

8. "Participating member" means an eligible employee who ~~elects to participate~~participates in the defined contribution retirement plan established under this chapter.

~~7.~~9. "Permanent employee" means ~~a state~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

~~8.~~10. "Temporary employee" means a governmental unit employee who is not an eligible employee due to not meeting the qualification of being a permanent employee, and who is not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 16. AMENDMENT. Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election through December 31, 2024.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written

elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect ~~a person's~~<u>an individual's</u> right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, <u>and before January 1, 2025,</u> may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed <u>before January 1, 2025,</u> and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's re-employment and ending upon the expiration of six

months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects <u>under this section</u> to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board <u>of higher education</u> who is eligible to participate in an

alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution retirement plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

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

6. A participating member under this section who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee.

a. The temporary employee electing to participate in the defined contribution retirement plan shall pay ~~monthly to the fund an amount equal to eight and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2~~into the plan as provided under section 54-52.6-09.6.

b. An employer may not pay the temporary employee's contributions.

c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.

8. After December 31, 2024, an eligible employee is no longer allowed to elect participation under this section.

SECTION 17. Section 54-52.6-02.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-02.1. Participation in defined contribution retirement plan.

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, 2025, an eligible employee who is first enrolled shall participate in the defined contribution retirement plan under this chapter.

2. A temporary employee may elect to participate in the defined contribution retirement plan as provided under section 54-52.6-09.6.

3. A county elected official may elect to participate in the defined contribution retirement plan as provided under section 54-52-02.11.

4. A nonstate appointed official shall participate in the defined contribution retirement plan as provided under section 54-52-02.12.

SECTION 18. Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:

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

1. As used in this section, "eligible employee" means a permanent state employee who on January 1, 2025, is a participating member of the public employees retirement system main system plan under chapter ~~54-42~~54-52, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.

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

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

   b. For an eligible employee who elects to transfer from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the member's account in the defined contribution retirement plan under this chapter. However, if the eligible employee terminates employment before receiving the lump sum transfer under this section, the election made is ineffective and the eligible employee remains a

member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter.

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

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

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

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

SECTION 19. AMENDMENT. Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances.

1. For an individual who elects under section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment ~~prior to~~before receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual

remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

~~1.~~a. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or

~~2.~~b. The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

2. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, and before January 1, 2025, using only the formula contained in subdivision b of subsection ~~2~~1.

SECTION 20. AMENDMENT. Section 54-52.6-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-05. Direction of investments.

1. Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board. ~~The board shall follow federal guidelines for establishing a qualified default investment alternative for contributions made by a participating member who fails to provide explicit investment direction. The qualified default investment alternative must include an in-plan annuity. If a participating member does not elect an investment option upon enrollment into the defined contribution retirement plan, the board shall automatically enroll the participating member into the qualified default investment alternative option.~~

2. The board shall provide an investment menu of investment options. In establishing the investment options, the board shall:
   a. Include predetermined investment portfolio options constructed to reflect different risk profiles that automatically reallocate and rebalance contributions as a participating member ages.
   b. Allow a participating member to construct an investment portfolio using some or all of the investment options.
3. The board shall provide a diversified menu of mutual funds and in-plan lifetime annuity options, either fixed, variable, or a combination of both. In selecting an annuity provider the board shall comply with section 54-52.6-05.1.

SECTION 21. Section 54-52.6-05.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-05.1. Annuity provider - Qualifications.

1. The board shall select one or more annuity providers to provide the annuity options under this chapter.
2. In selecting an annuity provider under this section, the board shall:
   a. Determine whether the annuity provider and the provider's subsidiaries and affiliates have appropriate financial strength and stability at the time of selection and during the term of contract with the board.
      (1) The board may require the provider to provide the board with written representation:
         (a) The provider is in compliance with title 26.1.
         (b) The provider at the time of selection is and for each of the preceding seven years was in compliance and good standing with the insurance commissioner of the provider's domiciliary state and the provider is not operating under an order of rehabilitation or liquidation.
         (c) The provider maintains and has maintained reserves that satisfy the statutory requirements of each state in which the provider does business.

(2) <u>The board may require a provider selected by the board to provide annuities under this chapter to notify the board of a change of circumstances resulting in the provider failing to meet any of the requirements under paragraph 1.</u>

(3) <u>The board must have determined the provider has a claims paying ability rating that meets standards adopted by the board.</u>

b. <u>Determine whether the annuity provider is able to provide contracted rights and benefits to a participating member.</u>

c. <u>Determine whether the costs, including fees and commissions, of the annuity options in relation to the benefits and product features of the annuity options are reasonable.</u>

d. <u>Determine whether the administrative services to be provided under the annuity option are appropriate. At a minimum the administrative services must include periodic reports to the board.</u>

e. <u>Determine whether the annuity provider is experienced in paying lifetime retirement income through annuities offered to public employee defined contribution retirement plans.</u>

f. <u>Determine whether the annuity provider offers a menu of annuity options that meet the following conditions:</u>

(1) <u>The annuity options are suitable for participating members and beneficiaries.</u>

(2) <u>The contract terms and income benefits are clearly stated, based on reasonable assumptions.</u>

(3) <u>The menu of annuity options offers a range of lifetime income options.</u>

(4) <u>If an annuity is a variable annuity, the annuity offers a fixed account option along with a variable option.</u>

g. <u>Determine whether the annuity provider offers objective and participant-specific education and tools to help a participating member understand the appropriate use of annuities as a long-term retirement savings vehicle.</u>

SECTION 22. AMENDMENT. Section 54-52.6-08 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-08. Credit of transfers.

The board shall promptly credit the plan account of a participating member who makes an election under ~~this chapter~~section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

~~**SECTION 24. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**54-52.6-09. Contributions - Penalty.**~~

~~1. Each~~

~~a. A participating member who first joined the defined contribution retirement plan before January 1, 2025, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.~~

~~b. A participating member who first joined the defined contribution retirement plan after December 31, 2024, shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.~~

~~c. This assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

~~2. The~~

~~a. For a participating member who first joined the defined contribution retirement plan before January 1, 2025, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.~~

~~b. For a participating member who first joined the defined contribution retirement plan after December 31, 2024, the employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

~~c. For membersa participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.~~

~~d. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.~~

~~e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.~~

~~3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer~~

~~decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.~~

SECTION 23. Section 54-52.6-09.5 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.5. Employer contribution for defined benefit plan.

In addition to the employer contribution under section 54-52.6-09, a state employer shall contribute to the defined benefit retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under section 54-52-06 less the amount of the required employer contribution under ~~sections 54-52.2-09 and~~section 54-52.6-09. If a state employer uses federal funds to pay any or all of an employee's wages, the employer shall use state funds to pay this additional contribution.

SECTION 24. Section 54-52.6-09.6 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.6. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. Monthly, the temporary employee shall contribute an amount equal to ~~nine~~fifteen and twenty-six hundredths percent times the temporary employee's present monthly salary~~, and may elect to contribute up to an additional six percent~~. An employer may not pay the temporary employee's contribution. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

SECTION 25. AMENDMENT. Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-10. Vesting.

1. A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:
   ~~1.~~a. Upon completion of two years of service, fifty percent.
   ~~2.~~b. Upon completion of three years of service, seventy-five percent.
   ~~3.~~c. Upon completion of four years of service, one hundred percent.
2. A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan ~~pursuant to this chapter~~under section 54-52.6-02 must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

~~**SECTION 28. AMENDMENT.** Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**54-52.6-13. Distributions.**~~

~~1. A participating member is eligible to receive distribution of that person'sindividual's accumulated balance in the plan upon becoming a former participating member.~~
~~2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant to the~~

~~deceased participant's refund beneficiary, if any, as provided in this subsection. If the deceased participant designated an alternate refund beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subdivision d of subsection 3.~~

~~3.~~ ~~a.~~ ~~A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:~~

~~a.~~ ~~(1)~~ ~~A lump sum distribution to the recipient.~~

~~b.~~ ~~(2)~~ ~~A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.~~

~~c.~~ ~~(3)~~ ~~Periodic distributions, including annuities, as authorized by the board.~~

~~d.~~ ~~(4)~~ ~~No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.~~

~~b. A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in subdivisions a, b, or cparagraph 1, 2, or 3 of subdivision a if the surviving spouse is the sole refund beneficiary. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.~~

~~4. If the former participating member's vested account balance is less than one thousand dollars, the board shall automatically shall refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.~~

SECTION 26. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

1. The board shall provide information to employees who are eligible under section 54-52.6-02 to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter.
2. The board, or the board's vendor, shall provide to participating members:
   a. Enrollment information that includes benefits of the defined contribution retirement plan, investment options available, the assumption of risk, and administrative and investment costs.
   b. Ongoing investment and retirement income planning, including education on how to set, measure, and adjust income and saving goals based on desired retirement income and financial objectives, actual behavior, and changing circumstances.
   c. Retirement income education, including distribution options available and in-plan annuitization options.

d. <u>Advice and guidance information, tools, and services primarily focused on long-term planning and investing and life events that potentially influence and impact retirement savings.</u>

<u>3.</u> Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

SECTION 27. AMENDMENT. Section 54-52.6-19 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-19. Overpayments.

The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member <u>under this chapter</u>, refund beneficiary, or other person ~~who~~<u>that</u> has a claim to a distribution or any other benefit from a plan governed by this chapter.

SECTION 28. Section 54-52.6-22 of the North Dakota Century Code is created and enacted as follows:

<u>**54-52.6-22. Report to employee benefits programs committee.**</u>

<u>Annually, the board shall provide a report to the employee benefits programs committee on the status of the defined contribution retirement plan under this chapter.</u>

SECTION 29. Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:

<u>**54-52.6-23. Savings clause - Plan modification.**</u>

<u>If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.</u>

SECTION 30. REPEAL. Sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code are repealed.

SECTION 31. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN. During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 32. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND. The office of management and budget shall transfer $240,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 33. APPLICATION. Subdivision a of subsection 1 of section 54-52-06, as amended under section 12 of this Act, applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

SECTION 34. EFFECTIVE DATE. Sections 1, 3, 11, ~~34~~31 and ~~35~~32 of this Act become effective ~~July~~August 1, 2023; section 2, sections 4 through 10, sections 13 through ~~24~~21, and sections ~~26~~24 through ~~33~~30 of this Act become effective January 1, 2025; and sections 12, ~~25~~23, and ~~36~~33 of this Act become effective January 1, 2026.

23.0280.05015
Title.

Prepared by the Legislative Council staff for
Senator Cleary
April 4, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 15, remove "; to provide for a"

Page 1, line 16, remove "study"

Page 13, line 1, remove "a."

Page 13, line 1, remove "state"

Page 13, remove lines 19 through 21

Page 13, line 22, remove "c."

Page 13, line 22, overstrike "For a participating member who first enrolls after December 31, 2019,"

Page 13, line 23, remove "a participating political subdivision"

Page 13, line 23, overstrike "shall contribute an additional"

Page 13, overstrike lines 24 and 25

Page 22, line 16, replace "54-42" with "54-52"

Page 29, line 20, replace "a state" with "an"

Page 29, line 23, replace "a state" with "an"

Page 29, line 24, after "state" insert "or political subdivision"

Page 34, remove lines 1 through 6

Page 34, line 13, replace "Subdivision a of subsection" with "Subsection"

Page 34, line 16, after the third comma insert "and"

Page 34, line 16, remove "and 35"

Page 34, line 17, replace "July" with "August"

Page 34, line 18, replace "36" with "35"

Renumber accordingly

23.0280.05015

Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED HOUSE BILL NO. 1040

Introduced by

Legislative Management

(Retirement Committee)

A BILL for an Act to create and enact sections 54-52-02.15, 54-52.2-09, 54-52.6-02.1, 54-52.6-02.2, 54-52.6-05.1, 54-52.6-09.5, 54-52.6-09.6, 54-52.6-22, and 54-52.6-23 of the North Dakota Century Code, relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan; to amend and reenact section 6-09.4-10.1, paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3, sections 21-10-13, 54-52-01, 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, subsection 2 of section 54-52-05, sections 54-52-06 and 54-52-14.3, subdivision b of subsection 1 of section 54-52-17.2, and sections 54-52.6-01, 54-52.6-02, 54-52.6-03, 54-52.6-05, 54-52.6-08, 54-52.6-09, 54-52.6-10, 54-52.6-13, 54-52.6-15, and 54-52.6-19 of the North Dakota Century Code, relating to a transfer from the legacy earnings fund to the public employees retirement system main plan and the public employees retirement system defined benefit and defined contribution retirement plans; to repeal sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code, relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan~~; to provide for a study~~; to provide for a transfer; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-10.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-10.1. Legacy sinking and interest fund - Debt service requirements - Public finance authority.

There is created in the state treasury the legacy sinking and interest fund. The fund consists of all moneys deposited in the fund under section 21-10-13. Moneys in the fund may be spent by the public finance authority pursuant to legislative appropriations to meet the debt service requirements for evidences of indebtedness issued by the authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs. ~~Any moneys in the fund in excess of the amounts appropriated from the fund to meet the debt service requirements for a biennium must be transferred by the state treasurer to the public employees retirement system main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and then subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent.~~

SECTION 2. AMENDMENT. Paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

(1) The public employees retirement system, except an "eligible employee" as that term is defined under section 54-52-02.15.

SECTION 3. AMENDMENT. Section 21-10-13 of the North Dakota Century Code is amended and reenacted as follows:

21-10-13. Legacy earnings fund - State treasurer - Transfers.

1. There is created in the state treasury the legacy earnings fund. The fund consists of all moneys transferred to the fund under subsection 2 and all interest and earnings upon moneys in the fund.
2. Any legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota must be immediately transferred by the state treasurer to the legacy earnings fund.
3. For each biennium subsequent to the biennium in which the legacy fund earnings are transferred under subsection 2, the amount available for appropriation from the legacy earnings fund is seven percent of the five-year average value of the legacy fund assets as reported by the state investment board. The average value of the legacy fund assets must be calculated using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.

4. On July first of each odd-numbered year, from the amount available for appropriation or transfer from the legacy earnings fund for the biennium, the state treasurer shall transfer funding in the following order:

   a. The lesser of the first one hundred fifty million dollars or an amount equal to any legislative appropriations to meet the debt service requirements for a biennium for evidences of indebtedness issued by the public finance authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs to the legacy sinking and interest fund under section 6-09.4-10.1.

   b. The next seventy million dollars to the public employees retirement system for administrative expenses for chapters 54-52 and 54-52.6 and for the unfunded liability of the main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent as reported for the most recently completed even-numbered fiscal year.

   c. The next sixty million dollars to the highway tax distribution fund for allocations under section 54-27-19.

   ~~c.~~d. Any remaining funds for other purposes as designated by the legislative assembly, including:

      (1) Up to fifty million dollars for tax relief pursuant to appropriations or transfers authorized by the legislative assembly;

      (2) Up to thirty million dollars to the clean sustainable energy fund pursuant to appropriations or transfers authorized by the legislative assembly; and

      (3) Up to thirty million dollars for university research programs, the innovation loan fund to support technology advancement, and workforce enrichment initiatives pursuant to appropriations or transfers authorized by the legislative assembly.

5. If the amounts transferred under subsection 2 exceed the amount available for appropriation under subsection 3, an amount equal to any appropriations from the legacy sinking and interest fund for bond payments under section 6-09.4-10.1 must be retained in the legacy earnings fund through June 30, 2025, after which an amount equal to twice any appropriations from the legacy sinking and interest fund under section 6-09.4-10.1 for bond payments, but not more than one hundred fifty million dollars, must be retained in the legacy earnings fund. After deducting any amounts to be retained in the legacy earnings fund, the state treasurer shall transfer, within thirty days, any remaining amounts under this subsection in the following order:
   a. The first one hundred million dollars to the legacy fund to become part of the principal.
   b. Any remaining amount to the strategic investment and improvements fund to be used in accordance with the provisions of section 15-08.1-08.

SECTION 4. AMENDMENT. Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52-01. Definition of terms.

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. <u>"Deferred member" means a participating member who is not actively participating in the main plan under this chapter and who has an account intact in the main plan under this chapter.</u>
<u>5.</u> "Eligible employee"<u>, except as otherwise provided under section 54-52-02.15,</u> means ~~all~~<u>a</u> permanent ~~employees~~<u>employee</u> who ~~meet~~<u>meets</u> all of the eligibility requirements set by this chapter and who ~~are~~<u>is</u> eighteen years or more of age~~, and~~<u>. The term</u>

includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. ~~Eligible employee~~The term does not include nonclassified state employees who ~~elect~~elected under section 54-52.6-02 to become members of the retirement plan established under chapter 54-52.6 ~~but~~. The term does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board of higher education.

~~5.~~6. "Employee" means any individual employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

~~6.~~7. "Employer" means a governmental unit.

~~7.~~8. "Firefighter" means a participating member who is employed as a firefighter by a political subdivision and, notwithstanding subsection 13, for an individual employed after July 31, 2017, is employed at least thirty-two hours per week and at least twenty weeks each year of employment. A firefighter who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after July 31, 2017, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system. The term does not include a firefighter employee of the North Dakota national guard.

~~8.~~9. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.

~~9.~~10. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision ~~thereof~~of the state.

~~10.~~11. "National guard security officer or firefighter" means a participating member who is:

a. A security police employee of the North Dakota national guard; or

b. A firefighter employee of the North Dakota national guard.

~~11.~~12. "Participating member" means an eligible employee who through payment into the plan has established a claim against the plan.

~~12.~~13. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 13, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after August 1, 2005, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

~~13.~~14. "Permanent employee" means ~~a governmental unit~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.

~~14.~~15. "Prior service" means service or employment before July 1, 1966.

~~15.~~16. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.

~~16.~~17. "Public employees retirement system" means the retirement plan and program established by this chapter.

~~17.~~18. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan.

~~18.~~19. "Retirement board" or "board" means the governing authority created under section 54-52-03.

~~19.~~20. "Seasonal employee" means a participating member who does not work twelve months a year.

~~20.~~21. "Service" means employment on or after July 1, 1966.

~~21.~~22. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.

~~22.~~23. "Temporary employee" means ~~a governmental unit~~an employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 5. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials.

1. After December 31, 1999, ~~a person~~but before January 1, 2025, an individual elected or appointed to a state office for the first time must, from and after the date that ~~person~~individual qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the defined contribution retirement plan established under chapter 54-52.6.

2. After December 31, 2024, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a

participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.

3. As used in this section, the phrase "for the first time" means ~~a person~~an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that ~~person's~~individual's appointment.

SECTION 6. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

1. ~~Within~~Before January 1, 2025, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to ~~eight~~fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by ~~two~~one percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January ~~2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014~~2025.
2. If the temporary employee first enrolled:
   a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
   b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, 2025, who becomes a permanent employee after December 31, 2024, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.

4. After December 31, 2024, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.

5. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

SECTION 7. AMENDMENT. Section 54-52-02.11 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.11. Participation requirements for nonstate elected officials.

~~Elected~~

1. Before January 1, 2025, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.

2. After December 31, 2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

SECTION 8. AMENDMENT. Section 54-52-02.12 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.12. Participation requirements for nonstate appointed officials.

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, 2025, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.

2. After December 31, 2024, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

SECTION 9. Section 54-52-02.15 of the North Dakota Century Code is created and enacted as follows:

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

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

does not apply to an individual who before January 1, 2025, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.

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

SECTION 10. AMENDMENT. Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Each member must be assessed and required to pay monthly ~~four~~seven percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. ~~Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

SECTION 11. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

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

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered

employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 12. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee.

~~1.~~ ~~Each~~

1. ~~a.~~ As determined by actuarial valuations, each ~~state~~ governmental unit shall contribute to the defined benefit plan an amount ~~equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024~~on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of two hundred forty-six months, beginning January 1, 2026, and continuing through June 30, 2046. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.

   ~~b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.~~

   ~~c. For a participating member who first enrolls after December 31, 2019, the governmental unit~~a participating political subdivision ~~shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.~~

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to

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

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

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

SECTION 13. AMENDMENT. Section 54-52-14.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-14.3. Public employee retirement funds - Use and investment.

Any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of ~~that~~the retirement system, including the payment of system administrative costs.

SECTION 14. AMENDMENT. Subdivision b of subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

b. ~~Pursuant~~Subject to section 54-52-02.15 and pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17. A permanent employee or a temporary employee employed before August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

(1) The final average salary as calculated in section 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.

(2) The final average salary as calculated in section 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

SECTION 15. Section 54-52.2-09 of the North Dakota Century Code is created and enacted as follows:

54-52.2-09. Employer match for members of defined contribution retirement plan.

An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, 2024, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.

SECTION 16. AMENDMENT. Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-01. Definition of terms.

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

1. "Board" means the public employees retirement system board.
2. "Deferred member" means ~~a person who elected to receive deferred vested retirement benefits~~an individual who is not actively participating in the main plan under chapter 54-52 who has an account intact in the main plan under chapter 54-52.
3. "Eligible employee" ~~means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan~~, for employees who become participating members after December 31, 2024, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, 2025, the term includes a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services.
4. "Employee" means ~~any person~~an individual employed by ~~the state~~a governmental unit, whose compensation is paid out of ~~state~~the governmental unit's funds, or funds controlled or administered by ~~the state~~a governmental unit or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means ~~the state of North Dakota~~a governmental unit.
6. "Governmental unit" means the state of North Dakota or a participating political subdivision of the state.
7. "Normal retirement date" is determined based on subsection 3 of section 54-52-17.

8. "Participating member" means an eligible employee who ~~elects to participate~~participates in the defined contribution retirement plan established under this chapter.

~~7.~~9. "Permanent employee" means ~~a state~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

~~8.~~10. "Temporary employee" means a governmental unit employee who is not an eligible employee due to not meeting the qualification of being a permanent employee, and who is not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 17. AMENDMENT. Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election through December 31, 2024.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written

elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect ~~a person's~~an individual's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before January 1, 2025, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed before January 1, 2025, and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's re-employment and ending upon the expiration of six

months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects <u>under this section</u> to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board <u>of higher education</u> who is eligible to participate in an

alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution retirement plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

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

6. A participating member under this section who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee.

a. The temporary employee electing to participate in the defined contribution retirement plan shall pay ~~monthly to the fund an amount equal to eight and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2~~into the plan as provided under section 54-52.6-09.6.

b. An employer may not pay the temporary employee's contributions.

c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.

8. After December 31, 2024, an eligible employee is no longer allowed to elect participation under this section.

SECTION 18. Section 54-52.6-02.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-02.1. Participation in defined contribution retirement plan.

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, 2025, an eligible employee who is first enrolled shall participate in the defined contribution retirement plan under this chapter.
2. A temporary employee may elect to participate in the defined contribution retirement plan as provided under section 54-52.6-09.6.
3. A county elected official may elect to participate in the defined contribution retirement plan as provided under section 54-52-02.11.
4. A nonstate appointed official shall participate in the defined contribution retirement plan as provided under section 54-52-02.12.

SECTION 19. Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:

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

1. As used in this section, "eligible employee" means a permanent state employee who on January 1, 2025, is a participating member of the public employees retirement system main system plan under chapter ~~54-42~~54-52, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.
2. The board shall provide a three-month election period, from January 1, 2025, through March 31, 2025, for an eligible employee to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board.
   a. An election under this section made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable.
   b. For an eligible employee who elects to transfer from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the member's account in the defined contribution retirement plan under this chapter. However, if the eligible employee terminates employment before receiving the lump sum transfer under this section, the election made is ineffective and the eligible employee remains a

member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter.

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

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

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

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

SECTION 20. AMENDMENT. Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances.

1. For an individual who elects under section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment ~~prior to~~before receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual

remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

~~1.~~a. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or

~~2.~~b. The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

2. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, and before January 1, 2025, using only the formula contained in subdivision b of subsection ~~2~~1.

SECTION 21. AMENDMENT. Section 54-52.6-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-05. Direction of investments.

1. Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board. The board shall follow federal guidelines for establishing a qualified default investment alternative for contributions made by a participating member who fails to provide explicit investment direction. The qualified default investment alternative must include an in-plan annuity. If a participating member does not elect an investment option upon enrollment into the defined contribution retirement plan, the board shall automatically enroll the participating member into the qualified default investment alternative option.

2. The board shall provide an investment menu of investment options. In establishing the investment options, the board shall:
   a. Include predetermined investment portfolio options constructed to reflect different risk profiles that automatically reallocate and rebalance contributions as a participating member ages.
   b. Allow a participating member to construct an investment portfolio using some or all of the investment options.
3. The board shall provide a diversified menu of mutual funds and in-plan lifetime annuity options, either fixed, variable, or a combination of both. In selecting an annuity provider the board shall comply with section 54-52.6-05.1.

SECTION 22. Section 54-52.6-05.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-05.1. Annuity provider - Qualifications.

1. The board shall select one or more annuity providers to provide the annuity options under this chapter.
2. In selecting an annuity provider under this section, the board shall:
   a. Determine whether the annuity provider and the provider's subsidiaries and affiliates have appropriate financial strength and stability at the time of selection and during the term of contract with the board.
      (1) The board may require the provider to provide the board with written representation:
         (a) The provider is in compliance with title 26.1.
         (b) The provider at the time of selection is and for each of the preceding seven years was in compliance and good standing with the insurance commissioner of the provider's domiciliary state and the provider is not operating under an order of rehabilitation or liquidation.
         (c) The provider maintains and has maintained reserves that satisfy the statutory requirements of each state in which the provider does business.

(2) The board may require a provider selected by the board to provide annuities under this chapter to notify the board of a change of circumstances resulting in the provider failing to meet any of the requirements under paragraph 1.

(3) The board must have determined the provider has a claims paying ability rating that meets standards adopted by the board.

b. Determine whether the annuity provider is able to provide contracted rights and benefits to a participating member.

c. Determine whether the costs, including fees and commissions, of the annuity options in relation to the benefits and product features of the annuity options are reasonable.

d. Determine whether the administrative services to be provided under the annuity option are appropriate. At a minimum the administrative services must include periodic reports to the board.

e. Determine whether the annuity provider is experienced in paying lifetime retirement income through annuities offered to public employee defined contribution retirement plans.

f. Determine whether the annuity provider offers a menu of annuity options that meet the following conditions:

(1) The annuity options are suitable for participating members and beneficiaries.

(2) The contract terms and income benefits are clearly stated, based on reasonable assumptions.

(3) The menu of annuity options offers a range of lifetime income options.

(4) If an annuity is a variable annuity, the annuity offers a fixed account option along with a variable option.

g. Determine whether the annuity provider offers objective and participant-specific education and tools to help a participating member understand the appropriate use of annuities as a long-term retirement savings vehicle.

SECTION 23. AMENDMENT. Section 54-52.6-08 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-08. Credit of transfers.

The board shall promptly credit the plan account of a participating member who makes an election under ~~this chapter~~section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

SECTION 24. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. ~~Each~~
   a. A participating member who first joined the defined contribution retirement plan before January 1, 2025, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.
   b. A participating member who first joined the defined contribution retirement plan after December 31, 2024, shall contribute monthly four percent of the monthly salary or wage paid to the participant~~, and this~~. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.
   c. This assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. ~~Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~
2. ~~The~~
   a. For a participating member who first joined the defined contribution retirement plan before January 1, 2025, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.

b. For a participating member who first joined the defined contribution retirement plan after December 31, 2024, the employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1. ~~Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

c. For ~~members~~a participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.

d. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.

e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer

decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

SECTION 25. Section 54-52.6-09.5 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.5. Employer contribution for defined benefit plan.

In addition to the employer contribution under section 54-52.6-09, ~~a state~~an employer shall contribute to the defined benefit retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under section 54-52-06 less the amount of the required employer contribution under sections 54-52.2-09 and 54-52.6-09. If ~~a state~~an employer uses federal funds to pay any or all of an employee's wages, the employer shall use state or political subdivision funds to pay this additional contribution.

SECTION 26. Section 54-52.6-09.6 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.6. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths

percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional six percent. An employer may not pay the temporary employee's contribution. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

SECTION 27. AMENDMENT. Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-10. Vesting.

1. A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:
   ~~1.~~a. Upon completion of two years of service, fifty percent.
   ~~2.~~b. Upon completion of three years of service, seventy-five percent.
   ~~3.~~c. Upon completion of four years of service, one hundred percent.
2. A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan ~~pursuant to this chapter~~under section 54-52.6-02 must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

SECTION 28. AMENDMENT. Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that ~~person's~~individual's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant to the

deceased participant's refund beneficiary, if any, as provided in this subsection. If the deceased participant designated an alternate refund beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subdivision d of subsection 3.

3. a. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:

~~a.~~ (1) A lump sum distribution to the recipient.

~~b.~~ (2) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

~~c.~~ (3) Periodic distributions, including annuities, as authorized by the board.

~~d.~~ (4) No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

b. A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in ~~subdivisions a, b, or c~~paragraph 1, 2, or 3 of subdivision a if the surviving spouse is the sole refund beneficiary. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than one thousand dollars, the board ~~shall~~ automatically shall refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 29. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

1. The board shall provide information to employees who are eligible under section 54-52.6-02 to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter.

2. The board, or the board's vendor, shall provide to participating members:

a. Enrollment information that includes benefits of the defined contribution retirement plan, investment options available, the assumption of risk, and administrative and investment costs.

b. Ongoing investment and retirement income planning, including education on how to set, measure, and adjust income and saving goals based on desired retirement income and financial objectives, actual behavior, and changing circumstances.

c. Retirement income education, including distribution options available and in-plan annuitization options.

d. Advice and guidance information, tools, and services primarily focused on long-term planning and investing and life events that potentially influence and impact retirement savings.

3. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

SECTION 30. AMENDMENT. Section 54-52.6-19 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-19. Overpayments.

The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member under this chapter, refund beneficiary, or other person ~~who~~that has a claim to a distribution or any other benefit from a plan governed by this chapter.

SECTION 31. Section 54-52.6-22 of the North Dakota Century Code is created and enacted as follows:

54-52.6-22. Report to employee benefits programs committee.

Annually, the board shall provide a report to the employee benefits programs committee on the status of the defined contribution retirement plan under this chapter.

SECTION 32. Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:

54-52.6-23. Savings clause - Plan modification.

If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 33. REPEAL. Sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code are repealed.

~~**SECTION 34. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN.** During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.~~

SECTION 34. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND. The office of management and budget shall transfer $240,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 35. APPLICATION. ~~Subdivision a of subsection~~Subsection 1 of section 54-52-06, as amended under section 12 of this Act, applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

SECTION 36. EFFECTIVE DATE. Sections 1, 3, 11, and 34 ~~and 35~~ of this Act become effective ~~July~~August 1, 2023; section 2, sections 4 through 10, sections 13 through 24, and sections 26 through 33 of this Act become effective January 1, 2025; and sections 12, 25, and ~~36~~35 of this Act become effective January 1, 2026.

23.0280.05016
Title.

Prepared by the Legislative Council staff for
Senator Cleary
April 4, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 5, remove "section 6-09.4-10.1,"

Page 1, line 6, remove "21-10-13,"

Page 1, line 10, remove "a transfer from the"

Page 1, line 11, remove "legacy earnings fund to the public employees retirement system main plan and"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 10

Page 2, remove lines 15 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 13

Page 22, line 16, replace "54-42" with "54-52"

Page 34, line 14, replace "12" with "10"

Page 34, line 16, replace "1, 3, 11, 34 and 35" with "9, 32, and 33"

Page 34, line 17, replace "July" with "August"

Page 34, line 17, replace "2" with "1"

Page 34, line 17, replace "4" with "2"

Page 34, line 17, replace "10" with "8"

Page 34, line 17, replace "13" with "11"

Page 34, line 17, replace "24" with "22"

Page 34, line 17, replace "26" with "24"

Page 34, line 18, replace "33" with "31"

Page 34, line 18, replace "12, 25, and 36" with "10, 23, and 34"

Renumber accordingly

23.0280.05016

Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED HOUSE BILL NO. 1040

Introduced by

Legislative Management

(Retirement Committee)

A BILL for an Act to create and enact sections 54-52-02.15, 54-52.2-09, 54-52.6-02.1, 54-52.6-02.2, 54-52.6-05.1, 54-52.6-09.5, 54-52.6-09.6, 54-52.6-22, and 54-52.6-23 of the North Dakota Century Code, relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan; to amend and reenact ~~section 6-09.4-10.1,~~ paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3, sections ~~21-10-13,~~ 54-52-01, 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, subsection 2 of section 54-52-05, sections 54-52-06 and 54-52-14.3, subdivision b of subsection 1 of section 54-52-17.2, and sections 54-52.6-01, 54-52.6-02, 54-52.6-03, 54-52.6-05, 54-52.6-08, 54-52.6-09, 54-52.6-10, 54-52.6-13, 54-52.6-15, and 54-52.6-19 of the North Dakota Century Code, relating to ~~a transfer from the legacy earnings fund to the public employees retirement system main plan and~~ the public employees retirement system defined benefit and defined contribution retirement plans; to repeal sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code, relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan; to provide for a study; to provide for a transfer; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 6-09.4-10.1 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**6-09.4-10.1. Legacy sinking and interest fund - Debt service requirements - Public finance authority.**~~

~~There is created in the state treasury the legacy sinking and interest fund. The fund consists of all moneys deposited in the fund under section 21-10-13. Moneys in the fund may be spent by the public finance authority pursuant to legislative appropriations to meet the debt service~~

~~requirements for evidences of indebtedness issued by the authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs. Any moneys in the fund in excess of the amounts appropriated from the fund to meet the debt service requirements for a biennium must be transferred by the state treasurer to the public employees retirement system main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and then subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent.~~

SECTION 1. AMENDMENT. Paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

(1) The public employees retirement system, except an "eligible employee" as that term is defined under section 54-52-02.15.

~~**SECTION 3. AMENDMENT.** Section 21-10-13 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**21-10-13. Legacy earnings fund - State treasurer - Transfers.**~~

~~1. There is created in the state treasury the legacy earnings fund. The fund consists of all moneys transferred to the fund under subsection 2 and all interest and earnings upon moneys in the fund.~~

~~2. Any legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota must be immediately transferred by the state treasurer to the legacy earnings fund.~~

~~3. For each biennium subsequent to the biennium in which the legacy fund earnings are transferred under subsection 2, the amount available for appropriation from the legacy earnings fund is seven percent of the five-year average value of the legacy fund assets as reported by the state investment board. The average value of the legacy fund assets must be calculated using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.~~

~~4. On July first of each odd-numbered year, from the amount available for appropriation or transfer from the legacy earnings fund for the biennium, the state treasurer shall transfer funding in the following order:~~

~~a. The lesser of the first one hundred fifty million dollars or an amount equal to any legislative appropriations to meet the debt service requirements for a biennium for evidences of indebtedness issued by the public finance authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs to the legacy sinking and interest fund under section 6-09.4-10.1.~~

~~b. The next seventy million dollars to the public employees retirement system for administrative expenses for chapters 54-52 and 54-52.6 and for the unfunded liability of the main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent as reported for the most recently completed even-numbered fiscal year.~~

~~c. The next sixty million dollars to the highway tax distribution fund for allocations under section 54-27-19.~~

~~c.d. Any remaining funds for other purposes as designated by the legislative assembly, including:~~

~~(1) Up to fifty million dollars for tax relief pursuant to appropriations or transfers authorized by the legislative assembly;~~

~~(2) Up to thirty million dollars to the clean sustainable energy fund pursuant to appropriations or transfers authorized by the legislative assembly; and~~

~~(3) Up to thirty million dollars for university research programs, the innovation loan fund to support technology advancement, and workforce enrichment initiatives pursuant to appropriations or transfers authorized by the legislative assembly.~~

~~5. If the amounts transferred under subsection 2 exceed the amount available for appropriation under subsection 3, an amount equal to any appropriations from the legacy sinking and interest fund for bond payments under section 6-09.4-10.1 must be retained in the legacy earnings fund through June 30, 2025, after which an amount equal to twice any appropriations from the legacy sinking and interest fund under section 6-09.4-10.1 for bond payments, but not more than one hundred fifty million dollars, must be retained in the legacy earnings fund. After deducting any amounts to be retained in the legacy earnings fund, the state treasurer shall transfer, within thirty days, any remaining amounts under this subsection in the following order:~~

~~a. The first one hundred million dollars to the legacy fund to become part of the principal.~~

~~b. Any remaining amount to the strategic investment and improvements fund to be used in accordance with the provisions of section 15-08.1-08.~~

SECTION 2. AMENDMENT. Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52-01. Definition of terms.

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. "Deferred member" means a participating member who is not actively participating in the main plan under this chapter and who has an account intact in the main plan under this chapter.
5. "Eligible employee", except as otherwise provided under section 54-52-02.15, means ~~all~~a permanent ~~employees~~employee who ~~meet~~meets all of the eligibility requirements set by this chapter and who ~~are~~is eighteen years or more of age~~, and~~. The term

includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. ~~Eligible employee~~The term does not include nonclassified state employees who ~~elect~~elected under section 54-52.6-02 to become members of the retirement plan established under chapter 54-52.6 ~~but~~. The term does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board of higher education.

~~5.~~6. "Employee" means any individual employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

~~6.~~7. "Employer" means a governmental unit.

~~7.~~8. "Firefighter" means a participating member who is employed as a firefighter by a political subdivision and, notwithstanding subsection 13, for an individual employed after July 31, 2017, is employed at least thirty-two hours per week and at least twenty weeks each year of employment. A firefighter who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after July 31, 2017, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system. The term does not include a firefighter employee of the North Dakota national guard.

~~8.~~9. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.

~~9.~~10. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision ~~thereof~~of the state.

~~10.~~11. "National guard security officer or firefighter" means a participating member who is:

a. A security police employee of the North Dakota national guard; or

b. A firefighter employee of the North Dakota national guard.

~~11.~~12. "Participating member" means an eligible employee who through payment into the plan has established a claim against the plan.

~~12.~~13. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 13, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after August 1, 2005, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

~~13.~~14. "Permanent employee" means ~~a governmental unit~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.

~~14.~~15. "Prior service" means service or employment before July 1, 1966.

~~15.~~16. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.

~~16.~~17. "Public employees retirement system" means the retirement plan and program established by this chapter.

~~17.~~18. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan.

~~18.~~19. "Retirement board" or "board" means the governing authority created under section 54-52-03.

~~19.~~20. "Seasonal employee" means a participating member who does not work twelve months a year.

~~20.~~21. "Service" means employment on or after July 1, 1966.

~~21.~~22. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.

~~22.~~23. "Temporary employee" means ~~a governmental unit~~an employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 3. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials.

1. After December 31, 1999, ~~a person~~but before January 1, 2025, an individual elected or appointed to a state office for the first time must, from and after the date that ~~person~~individual qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the defined contribution retirement plan established under chapter 54-52.6.

2. After December 31, 2024, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a

participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.

3. As used in this section, the phrase "for the first time" means ~~a person~~an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that ~~person's~~individual's appointment.

SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

1. ~~Within~~Before January 1, 2025, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to ~~eight~~fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by ~~two~~one percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January ~~2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014~~2025.
2. If the temporary employee first enrolled:
   a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
   b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, 2025, who becomes a permanent employee after December 31, 2024, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.

4. After December 31, 2024, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.

5. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

SECTION 5. AMENDMENT. Section 54-52-02.11 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.11. Participation requirements for nonstate elected officials.

~~Elected~~

1. Before January 1, 2025, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.

2. After December 31, 2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

SECTION 6. AMENDMENT. Section 54-52-02.12 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.12. Participation requirements for nonstate appointed officials.

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, 2025, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.

2. After December 31, 2024, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

SECTION 7. Section 54-52-02.15 of the North Dakota Century Code is created and enacted as follows:

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

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

does not apply to an individual who before January 1, 2025, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.

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

SECTION 8. AMENDMENT. Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Each member must be assessed and required to pay monthly ~~four~~seven percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. ~~Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

SECTION 9. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

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

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered

employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 10. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee.

~~1.~~ ~~Each~~

1. a. As determined by actuarial valuations, each state governmental unit shall contribute to the defined benefit plan an amount ~~equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024~~on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of two hundred forty-six months, beginning January 1, 2026, and continuing through June 30, 2046. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.

   b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.

   c. For a participating member who first enrolls after December 31, 2019, ~~the governmental unit~~a participating political subdivision shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit

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

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

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

SECTION 11. AMENDMENT. Section 54-52-14.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-14.3. Public employee retirement funds - Use and investment.

Any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of ~~that~~the retirement system, including the payment of system administrative costs.

SECTION 12. AMENDMENT. Subdivision b of subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

b. ~~Pursuant~~<u>Subject to section 54-52-02.15 and pursuant</u> to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17. A permanent employee or a temporary employee employed before August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

(1) The final average salary as calculated in section 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.

(2) The final average salary as calculated in section 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

SECTION 13. Section 54-52.2-09 of the North Dakota Century Code is created and enacted as follows:

<u>**54-52.2-09. Employer match for members of defined contribution retirement plan.**</u>

<u>An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, 2024, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.</u>

SECTION 14. AMENDMENT. Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-01. Definition of terms.

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

1. "Board" means the public employees retirement system board.
2. "Deferred member" means ~~a person who elected to receive deferred vested retirement benefits~~an individual who is not actively participating in the main plan under chapter 54-52 who has an account intact in the main plan under chapter 54-52.
3. "Eligible employee" ~~means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan~~, for employees who become participating members after December 31, 2024, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, 2025, the term includes a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services.
4. "Employee" means ~~any person~~an individual employed by ~~the state~~a governmental unit, whose compensation is paid out of ~~state~~the governmental unit's funds, or funds controlled or administered by ~~the state~~a governmental unit or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means ~~the state of North Dakota~~a governmental unit.
6. "Governmental unit" means the state of North Dakota or a participating political subdivision of the state.
7. "Normal retirement date" is determined based on subsection 3 of section 54-52-17.

8. "Participating member" means an eligible employee who ~~elects to participate~~participates in the defined contribution retirement plan established under this chapter.

~~7.~~9. "Permanent employee" means ~~a state~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

~~8.~~10. "Temporary employee" means a governmental unit employee who is not an eligible employee due to not meeting the qualification of being a permanent employee, and who is not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 15. AMENDMENT. Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election through December 31, 2024.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written

elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect ~~a person's~~an individual's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before January 1, 2025, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed before January 1, 2025, and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's re-employment and ending upon the expiration of six

months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects under this section to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board of higher education who is eligible to participate in an

alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution retirement plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

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

6. A participating member under this section who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee.

a. The temporary employee electing to participate in the defined contribution retirement plan shall pay ~~monthly to the fund an amount equal to eight and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2~~into the plan as provided under section 54-52.6-09.6.

b. An employer may not pay the temporary employee's contributions.

c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.

8. After December 31, 2024, an eligible employee is no longer allowed to elect participation under this section.

SECTION 16. Section 54-52.6-02.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-02.1. Participation in defined contribution retirement plan.

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, 2025, an eligible employee who is first enrolled shall participate in the defined contribution retirement plan under this chapter.
2. A temporary employee may elect to participate in the defined contribution retirement plan as provided under section 54-52.6-09.6.
3. A county elected official may elect to participate in the defined contribution retirement plan as provided under section 54-52-02.11.
4. A nonstate appointed official shall participate in the defined contribution retirement plan as provided under section 54-52-02.12.

SECTION 17. Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:

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

1. As used in this section, "eligible employee" means a permanent state employee who on January 1, 2025, is a participating member of the public employees retirement system main system plan under chapter ~~54-42~~54-52, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.
2. The board shall provide a three-month election period, from January 1, 2025, through March 31, 2025, for an eligible employee to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board.
   a. An election under this section made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable.
   b. For an eligible employee who elects to transfer from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the member's account in the defined contribution retirement plan under this chapter. However, if the eligible employee terminates employment before receiving the lump sum transfer under this section, the election made is ineffective and the eligible employee remains a

member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter.

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

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

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

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

SECTION 18. AMENDMENT. Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances.

1. For an individual who elects under section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment ~~prior to~~before receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual

remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

~~1.~~a. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or

~~2.~~b. The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

2. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, and before January 1, 2025, using only the formula contained in subdivision b of subsection ~~2~~1.

SECTION 19. AMENDMENT. Section 54-52.6-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-05. Direction of investments.

1. Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board. The board shall follow federal guidelines for establishing a qualified default investment alternative for contributions made by a participating member who fails to provide explicit investment direction. The qualified default investment alternative must include an in-plan annuity. If a participating member does not elect an investment option upon enrollment into the defined contribution retirement plan, the board shall automatically enroll the participating member into the qualified default investment alternative option.

2. The board shall provide an investment menu of investment options. In establishing the investment options, the board shall:
   a. Include predetermined investment portfolio options constructed to reflect different risk profiles that automatically reallocate and rebalance contributions as a participating member ages.
   b. Allow a participating member to construct an investment portfolio using some or all of the investment options.
3. The board shall provide a diversified menu of mutual funds and in-plan lifetime annuity options, either fixed, variable, or a combination of both. In selecting an annuity provider the board shall comply with section 54-52.6-05.1.

SECTION 20. Section 54-52.6-05.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-05.1. Annuity provider - Qualifications.

1. The board shall select one or more annuity providers to provide the annuity options under this chapter.
2. In selecting an annuity provider under this section, the board shall:
   a. Determine whether the annuity provider and the provider's subsidiaries and affiliates have appropriate financial strength and stability at the time of selection and during the term of contract with the board.
      (1) The board may require the provider to provide the board with written representation:
         (a) The provider is in compliance with title 26.1.
         (b) The provider at the time of selection is and for each of the preceding seven years was in compliance and good standing with the insurance commissioner of the provider's domiciliary state and the provider is not operating under an order of rehabilitation or liquidation.
         (c) The provider maintains and has maintained reserves that satisfy the statutory requirements of each state in which the provider does business.

(2) The board may require a provider selected by the board to provide annuities under this chapter to notify the board of a change of circumstances resulting in the provider failing to meet any of the requirements under paragraph 1.

(3) The board must have determined the provider has a claims paying ability rating that meets standards adopted by the board.

b. Determine whether the annuity provider is able to provide contracted rights and benefits to a participating member.

c. Determine whether the costs, including fees and commissions, of the annuity options in relation to the benefits and product features of the annuity options are reasonable.

d. Determine whether the administrative services to be provided under the annuity option are appropriate. At a minimum the administrative services must include periodic reports to the board.

e. Determine whether the annuity provider is experienced in paying lifetime retirement income through annuities offered to public employee defined contribution retirement plans.

f. Determine whether the annuity provider offers a menu of annuity options that meet the following conditions:

(1) The annuity options are suitable for participating members and beneficiaries.

(2) The contract terms and income benefits are clearly stated, based on reasonable assumptions.

(3) The menu of annuity options offers a range of lifetime income options.

(4) If an annuity is a variable annuity, the annuity offers a fixed account option along with a variable option.

g. Determine whether the annuity provider offers objective and participant-specific education and tools to help a participating member understand the appropriate use of annuities as a long-term retirement savings vehicle.

SECTION 21. AMENDMENT. Section 54-52.6-08 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-08. Credit of transfers.

The board shall promptly credit the plan account of a participating member who makes an election under ~~this chapter~~section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

SECTION 22. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. ~~Each~~
   a. A participating member who first joined the defined contribution retirement plan before January 1, 2025, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.
   b. A participating member who first joined the defined contribution retirement plan after December 31, 2024, shall contribute monthly four percent of the monthly salary or wage paid to the participant~~, and this~~. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.
   c. This assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. ~~Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~
2. ~~The~~
   a. For a participating member who first joined the defined contribution retirement plan before January 1, 2025, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.

b. For a participating member who first joined the defined contribution retirement plan after December 31, 2024, the employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1. ~~Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

c. For ~~members~~a participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.

d. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.

e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer

decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

SECTION 23. Section 54-52.6-09.5 of the North Dakota Century Code is created and enacted as follows:

<u>**54-52.6-09.5. Employer contribution for defined benefit plan.**</u>

<u>In addition to the employer contribution under section 54-52.6-09, a state employer shall contribute to the defined benefit retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under section 54-52-06 less the amount of the required employer contribution under sections 54-52.2-09 and 54-52.6-09. If a state employer uses federal funds to pay any or all of an employee's wages, the employer shall use state funds to pay this additional contribution.</u>

SECTION 24. Section 54-52.6-09.6 of the North Dakota Century Code is created and enacted as follows:

<u>**54-52.6-09.6. Participation by temporary employees.**</u>

<u>A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths</u>

percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional six percent. An employer may not pay the temporary employee's contribution. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

SECTION 25. AMENDMENT. Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-10. Vesting.

1. A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:
   ~~1.~~a. Upon completion of two years of service, fifty percent.
   ~~2.~~b. Upon completion of three years of service, seventy-five percent.
   ~~3.~~c. Upon completion of four years of service, one hundred percent.
2. A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan ~~pursuant to this chapter~~under section 54-52.6-02 must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

SECTION 26. AMENDMENT. Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that ~~person's~~individual's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant to the

deceased participant's refund beneficiary, if any, as provided in this subsection. If the deceased participant designated an alternate refund beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subdivision d of subsection 3.

3. a. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:

~~a.~~ (1) A lump sum distribution to the recipient.

~~b.~~ (2) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

~~c.~~ (3) Periodic distributions, including annuities, as authorized by the board.

~~d.~~ (4) No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

b. A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in ~~subdivisions a, b, or c~~paragraph 1, 2, or 3 of subdivision a if the surviving spouse is the sole refund beneficiary. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than one thousand dollars, the board ~~shall~~ automatically shall refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 27. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

1. The board shall provide information to employees who are eligible under section 54-52.6-02 to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter.

2. The board, or the board's vendor, shall provide to participating members:

 a. Enrollment information that includes benefits of the defined contribution retirement plan, investment options available, the assumption of risk, and administrative and investment costs.

 b. Ongoing investment and retirement income planning, including education on how to set, measure, and adjust income and saving goals based on desired retirement income and financial objectives, actual behavior, and changing circumstances.

 c. Retirement income education, including distribution options available and in-plan annuitization options.

d. Advice and guidance information, tools, and services primarily focused on long-term planning and investing and life events that potentially influence and impact retirement savings.

3. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

SECTION 28. AMENDMENT. Section 54-52.6-19 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-19. Overpayments.

The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member under this chapter, refund beneficiary, or other person ~~who~~that has a claim to a distribution or any other benefit from a plan governed by this chapter.

SECTION 29. Section 54-52.6-22 of the North Dakota Century Code is created and enacted as follows:

54-52.6-22. Report to employee benefits programs committee.

Annually, the board shall provide a report to the employee benefits programs committee on the status of the defined contribution retirement plan under this chapter.

SECTION 30. Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:

54-52.6-23. Savings clause - Plan modification.

If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 31. REPEAL. Sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code are repealed.

SECTION 32. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN. During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 33. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND. The office of management and budget shall transfer $240,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 34. APPLICATION. Subdivision a of subsection 1 of section 54-52-06, as amended under section ~~12~~10 of this Act, applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

SECTION 35. EFFECTIVE DATE. Sections ~~1, 3, 11, 34 and 35~~9, 32, and 33 of this Act become effective ~~July~~August 1, 2023; section ~~2~~1, sections ~~4~~2 through ~~10~~8, sections ~~13~~11 through ~~24~~22, and sections ~~26~~24 through ~~33~~31 of this Act become effective January 1, 2025; and sections ~~12, 25, and 36~~10, 23, and 34 of this Act become effective January 1, 2026.

In Support of Senate Bill 2239

Comparison of Total Cash Outlays Between SB 2239 and HB 1040

	Senate Bill 2239	House Bill 1040
General Fund Transfer	$250,000,000	$0
S.I.I.F Transfer	0	240,000,000
Legacy Earnings Fund	0	630,000,000
State Increased ADEC*	**843,522,478**	**4,668,174,166**
Political Subs Increased ADEC*	936,798,920	
Total Cash Outlays to get to Full Funding	**$2,030,321,398**	**$5,538,174,166**
Approximate Funding Split of State's Increased ADEC		
General Fund	**$421,761,239**	**$2,749,774,166**
Special Funds	320,538,542	1,584,400,000
Federal Funds	101,222,697	334,000,000
	$843,522,478	**$4,668,174,166**

Notes: Return assumption for SB2239 is 6.5% on an open plan.
Return assumption for HB 1040 is 4.5% on a closed plan.
*ADEC = Actuarial Determined Employer Contribution
ADEC numbers provided by GRS, the actuarial firm that performed the actuarial analyses for both SB2239 and HB1040.

Prepared by: Pam Sharp, Coalition for Retirement Stability

23.0280.05017
Title.

Prepared by the Legislative Council staff for
Senator Mathern
April 5, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the public employees retirement system's main retirement plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT MAIN RETIREMENT PLAN. During the 2023-24 interim, the legislative management shall study best practices for public employee retirement plans, including defined benefit plans, defined contribution plans, and hybrid plans such as side-by-side hybrid plans, cash benefit plans, and stacked hybrid plans. The study must include development of legislation to implement the retirement plan best suited to meet the needs of the state, political subdivisions, and public employees. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

23.0280.05020
Title.

Prepared by the Legislative Council staff for
Representative Weisz
April 10, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 15, after "a" insert "legislative management"

Page 7, line 22, replace "January 1, 2025" with "July 1, 2023"

Page 7, line 28, replace "December 31, 2024" with "June 30, 2023"

Page 8, line 9, replace "January 1, 2025" with "July 1, 2023"

Page 8, line 29, replace "January 1, 2025" with "July 1, 2023"

Page 8, line 30, replace "December 31, 2024" with "June 30, 2023"

Page 9, line 1, replace "December 31, 2024" with "June 30, 2023"

Page 9, line 14, replace "January 1, 2025" with "July 1, 2023"

Page 9, line 17, replace "December 31, 2024" with "June 30, 2023"

Page 9, line 24, replace "January 1, 2025" with "July 1, 2023"

Page 9, line 27, replace "December 31, 2024" with "June 30, 2023"

Page 10, line 6, replace "December 31, 2024" with "June 30, 2023"

Page 10, line 10, replace "January 1, 2025" with "July 1, 2023"

Page 10, line 13, replace "January 1, 2025" with "July 1, 2023"

Page 10, line 14, replace "December 31, 2024" with "June 30, 2023"

Page 10, line 15, replace "January 1, 2025" with "July 1, 2023"

Page 11, line 1, replace "January 1, 2025" with "July 1, 2023"

Page 14, line 31, after the period insert "The state shall maintain the solvency of the main system retirement plan under this chapter."

Page 16, line 15, replace "December 31, 2024" with "June 30, 2023"

Page 16, line 17, replace "January 1, 2025" with "July 1, 2023"

Page 17, line 24, replace "**December 31, 2024**" with "**June 30, 2023**"

Page 18, line 14, replace "January 1, 2025" with "July 1, 2023"

Page 18, line 22, replace "January 1, 2025" with "July 1, 2023"

Page 21, line 28, replace "December 31, 2024" with "June 30, 2023"

Page 22, line 3, replace "January 1, 2025" with "July 1, 2023"

Page 22, line 13, replace "**December 31, 2024**" with "**June 30, 2023**"

Page 22, line 15, replace "January 1, 2025" with "July 1, 2023"

Page 22, line 16, replace "54-42" with "54-52"

Page 22, line 19, replace "January 1, 2025" with "July 1, 2023"

Page 22, line 20, replace "March 31, 2025" with "September 30, 2023" Time to decide

Page 23, line 7, replace "January 1, 2025" with "July 1, 2023"

Page 23, line 17, replace "January 2026" with "July 2024" start July 23

Page 23, line 17, replace "January 2028" with "July 2026"

Page 24, line 17, replace "January 1, 2025" with "July 1, 2023"

Page 29, after line 28, insert:

"1."

Page 29, line 30, replace "Monthly, the" with:

"a. A"

Page 29, line 31, after "employee" insert "who first joined the defined contribution plan before January 1, 2025,

Page 29, line 31, after "to" insert "fifteen and twenty-six hundredths percent times the temporary employee's present monthly salary.

b. A temporary employee who first joined the defined contribution plan after December 31, 2024, shall contribute an amount equal to"

Page 30, line 2, after the second underscored period insert:

"2."

Page 30, line 19, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 32, line 16, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 32, line 30, after "and" insert "any"

Page 34, line 16, replace ", 3," with "through"

Page 34, line 16, replace "34 and" with "sections 13 and 14, sections 16 through 20, sections 23, 24, 26, and 27, and sections 30 through"

Page 34, line 17, remove "section 2, sections 4 through 10, sections 13 through 24, and sections 26 through"

Page 34, line 18, replace "33" with "sections 15, 21, 22, 28, and 29"

Renumber accordingly

Members of the Senate Appropriations Committee,

Below is a summary of five amendments I have prepared for HB 1040. If this bill is to become law, there are several portions that should be improved:

1. **This amendment removes the $10k incentive for current employees to switch plans.** The dates are wrong from an IRS compliance perspective — Rep. Weisz, the author of the amendment, has acknowledged this too.
    a. This incentive — along with paying the net present value of the employees defined benefit — would dramatically drive up the costs over the next three years. It also presents a fairness issue to employees who will join the state shortly after its enacted, or employees who have already elected the DC Plan. Additionally, by removing all those people immediately from the Defined Benefit, it's funding level would immediately become even worse.

2. **This amendment clearly states North Dakota has a contract to pay the benefits currently obligated.** While this seems to be agreed upon, it is fairly ambiguous in the NDCC currently.
    a. If 1040 passes, this would be an assurance that we intend to pay the benefits to current public workers and retirees.

3. **This amendment would make it so the default contributions remain 7% from the employee and 8.26% from the employer for the DC plan.** 1040 allows employees to go up to that amount, but the default is lowered to 4% and 5.26%. **This also removes the language that requires an annuity in the plan as the default option.**
    a. The current DC plan has higher default contribution rates for workers, and this results in employees getting their full match and saving 15.26% for retirement. This is what our current plan does and is identified as best-practice by many financial advisors and supporters of 1040.
    b. While an annuity could be a good option for some on the DC plan, this should be an option, not the default.

4. **This amendment would strike the provisions that make the state cover the majority of the political subdivisons's portion of the liability.**
    a. If political subs are on the retirement plan, they should cover their share of the liability. They represent ~60% of the plan members. Taking on their liability dramatically drives up cost for the state.

5. **This amendment strikes the language related to the Legacy funds stream from 1040.** This may be unnecessary with Senator Hogue's amendment to the 1379. But it would make the bills consistent with one another.
    a. There are trade-offs with eliminating the streams as a funding source. <u>The Legislature would either have to replace that funding somehow or the state will continue to underfund the pension liability.</u> This will impact the actuarial analysis for the fund.

Prepared by Sen. Sean Cleary

23.0280.05022
Title.

Prepared by the Legislative Council staff for Senator Cleary
April 12, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 1, remove "54-52.2-09,"

Page 1, line 2, remove "54-52.6-02.2,"

Page 1, line 2, after the fourth comma insert "and"

Page 1, line 2, remove ", and 54-52.6-23"

Page 1, line 4, remove ", the deferred compensation program,"

Page 1, line 5, remove "section 6-09.4-10.1,"

Page 1, line 6, remove "21-10-13,"

Page 1, line 9, remove "54-52.6-09,"

Page 1, line 9, remove "54-52.6-13,"

Page 1, line 10, remove "a transfer from the"

Page 1, line 11, remove "legacy earnings fund to the public employees retirement system main plan and"

Page 1, line 13, replace "54-52.6-03" with "54-52-22"

Page 1, line 15, replace "balance transfer when opting to participate in the defined contribution plan" with "interpretation of the public employees retirement system retirement laws"

Page 1, line 15, remove "to provide for a"

Page 1, line 16, remove "study;"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 10

Page 2, remove lines 15 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 13

Page 13, line 1, remove "a."

Page 13, line 1, remove "state"

Page 13, remove lines 19 and 20

Page 13, line 21, remove "member"

Page 13, line 21, overstrike the period

Page 13, line 22, remove "c."

Page 13, line 22, overstrike "For a participating member who first enrolls after December 31, 2019," Page 13, line 23, remove "a participating political subdivision"

Page 13, line 23, overstrike "shall contribute an additional"

Page 13, overstrike lines 24 and 25

Page 14, line 25, after the first boldfaced period insert "**Contract -**"

Page 14, line 26, overstrike "Any" and insert immediately thereafter:

"1. An employee has a contract with the employer for purposes of retirement plan obligations arising out of a public employee retirement system under this chapter. A"

Page 14, line 28, after the period insert "This subsection does not prevent the state from increasing or decreasing employee or employer contribution rates for a public employee retirement system under this chapter.

2."

Page 15, remove lines 19 through 30

Page 17, line 24, remove "**through December 31, 2024**"

Page 22, remove lines 11 and 31

Page 23, remove lines 1 through 22

Page 24, line 24, remove "The board shall follow"

Page 24, remove lines 25 through 30

Page 27, remove lines 6 through 30

Page 28, remove lines 1 through 31

Page 29, remove lines 1 through 16

Page 29, line 20, replace "a state" with "an"

Page 29, line 23, replace "sections 54-52.2-09 and" with "section"

Page 29, line 23, replace "a state" with "an"

Page 29, line 24, after "state" insert "or political subdivision"

Page 29, line 31, replace "nine" with "fifteen"

Page 30, line 1, remove ", and may elect to contribute up"

Page 30, line 2, remove "to an additional six percent"

Page 30, remove lines 25 through 31

Page 31, remove lines 1 through 30

Page 32, remove lines 1 through 11

Page 33, remove lines 19 through 28

Page 33, line 29, replace "54-52.6-03" with "54-52-22"

Page 34, remove lines 1 through 6

Page 34, line 13, replace "Subdivision a of subsection" with "Subsection"

Page 34, line 14, replace "12" with "10"

Page 34, line 16, replace "1, 3, 11, 34" with "9, 26,"

Page 34, line 16, replace "35" with "27"

Page 34, line 17, replace "July" with "August"

Page 34, line 17, remove "section 2,"

Page 34, line 17, replace "4" with "1"

Page 34, line 17, replace "10" with "8"

Page 34, line 17, replace "13" with "11"

Page 34, line 17, replace "24" with "19"

Page 34, line 17, replace "26" with "21"

Page 34, line 18, replace "33" with "25"

Page 34, line 18, replace "12" with "10"

Page 34, line 18, replace "25" with "20"

Page 34, line 18, replace "36" with "28"

Renumber accordingly

23.0280.05022

Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED HOUSE BILL NO. 1040

Introduced by

Legislative Management

(Retirement Committee)

A BILL for an Act to create and enact sections 54-52-02.15, ~~54-52.2-09,~~ 54-52.6-02.1, ~~54-52.6-02.2,~~ 54-52.6-05.1, 54-52.6-09.5, 54-52.6-09.6, and 54-52.6-22~~, and 54-52.6-23~~ of the North Dakota Century Code, relating to the closure of the public employees retirement system main plan~~, the deferred compensation program,~~ and expansion of the defined contribution retirement plan; to amend and reenact ~~section 6-09.4-10.1,~~ paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3, sections ~~21-10-13,~~ 54-52-01, 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, subsection 2 of section 54-52-05, sections 54-52-06 and 54-52-14.3, subdivision b of subsection 1 of section 54-52-17.2, and sections 54-52.6-01, 54-52.6-02, 54-52.6-03, 54-52.6-05, 54-52.6-08, ~~54-52.6-09,~~ 54-52.6-10, ~~54-52.6-13,~~ 54-52.6-15, and 54-52.6-19 of the North Dakota Century Code, relating to ~~a transfer from the legacy earnings fund to the public employees retirement system main plan and~~ the public employees retirement system defined benefit and defined contribution retirement plans; to repeal sections 54-52-06.5 and ~~54-52.6-03~~54-52-22 of the North Dakota Century Code, relating to public employees retirement system retirement plan contribution rates upon reaching full funding and ~~balance transfer when opting to participate in the defined contribution plan~~ interpretation of the public employees retirement system retirement laws; ~~to provide for a study;~~ to provide for a transfer; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 6-09.4-10.1 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**6-09.4-10.1. Legacy sinking and interest fund - Debt service requirements - Public finance authority.**~~

~~There is created in the state treasury the legacy sinking and interest fund. The fund consists of all moneys deposited in the fund under section 21-10-13. Moneys in the fund may be spent~~

~~by the public finance authority pursuant to legislative appropriations to meet the debt service requirements for evidences of indebtedness issued by the authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs. Any moneys in the fund in excess of the amounts appropriated from the fund to meet the debt service requirements for a biennium must be transferred by the state treasurer to the public employees retirement system main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and then subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent.~~

SECTION 1. AMENDMENT. Paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

(1) The public employees retirement system, except an "eligible employee" as that term is defined under section 54-52-02.15.

~~**SECTION 3. AMENDMENT.** Section 21-10-13 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**21-10-13. Legacy earnings fund - State treasurer - Transfers.**~~

~~1. There is created in the state treasury the legacy earnings fund. The fund consists of all moneys transferred to the fund under subsection 2 and all interest and earnings upon moneys in the fund.~~

~~2. Any legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota must be immediately transferred by the state treasurer to the legacy earnings fund.~~

~~3. For each biennium subsequent to the biennium in which the legacy fund earnings are transferred under subsection 2, the amount available for appropriation from the legacy earnings fund is seven percent of the five-year average value of the legacy fund assets as reported by the state investment board. The average value of the legacy fund assets must be calculated using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.~~

~~4. On July first of each odd-numbered year, from the amount available for appropriation or transfer from the legacy earnings fund for the biennium, the state treasurer shall transfer funding in the following order:~~

~~a. The lesser of the first one hundred fifty million dollars or an amount equal to any legislative appropriations to meet the debt service requirements for a biennium for evidences of indebtedness issued by the public finance authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs to the legacy sinking and interest fund under section 6-09.4-10.1.~~

~~b. The next seventy million dollars to the public employees retirement system for administrative expenses for chapters 54-52 and 54-52.6 and for the unfunded liability of the main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent as reported for the most recently completed even-numbered fiscal year.~~

~~c. The next sixty million dollars to the highway tax distribution fund for allocations under section 54-27-19.~~

~~c.d. Any remaining funds for other purposes as designated by the legislative assembly, including:~~

~~(1) Up to fifty million dollars for tax relief pursuant to appropriations or transfers authorized by the legislative assembly;~~

~~(2) Up to thirty million dollars to the clean sustainable energy fund pursuant to appropriations or transfers authorized by the legislative assembly; and~~

~~(3) Up to thirty million dollars for university research programs, the innovation loan fund to support technology advancement, and workforce enrichment initiatives pursuant to appropriations or transfers authorized by the legislative assembly.~~

~~5. If the amounts transferred under subsection 2 exceed the amount available for appropriation under subsection 3, an amount equal to any appropriations from the legacy sinking and interest fund for bond payments under section 6-09.4-10.1 must be retained in the legacy earnings fund through June 30, 2025, after which an amount equal to twice any appropriations from the legacy sinking and interest fund under section 6-09.4-10.1 for bond payments, but not more than one hundred fifty million dollars, must be retained in the legacy earnings fund. After deducting any amounts to be retained in the legacy earnings fund, the state treasurer shall transfer, within thirty days, any remaining amounts under this subsection in the following order:~~

~~a. The first one hundred million dollars to the legacy fund to become part of the principal.~~

~~b. Any remaining amount to the strategic investment and improvements fund to be used in accordance with the provisions of section 15-08.1-08.~~

SECTION 2. AMENDMENT. Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52-01. Definition of terms.

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. "Deferred member" means a participating member who is not actively participating in the main plan under this chapter and who has an account intact in the main plan under this chapter.
5. "Eligible employee", except as otherwise provided under section 54-52-02.15, means ~~all~~a permanent ~~employees~~employee who ~~meet~~meets all of the eligibility requirements set by this chapter and who ~~are~~is eighteen years or more of age~~, and~~. The term

includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. ~~Eligible employee~~The term does not include nonclassified state employees who ~~elect~~elected under section 54-52.6-02 to become members of the retirement plan established under chapter 54-52.6 ~~but~~. The term does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board of higher education.

~~5.~~6. "Employee" means any individual employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

~~6.~~7. "Employer" means a governmental unit.

~~7.~~8. "Firefighter" means a participating member who is employed as a firefighter by a political subdivision and, notwithstanding subsection 13, for an individual employed after July 31, 2017, is employed at least thirty-two hours per week and at least twenty weeks each year of employment. A firefighter who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after July 31, 2017, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system. The term does not include a firefighter employee of the North Dakota national guard.

~~8.~~9. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.

~~9.~~10. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision ~~thereof~~of the state.

~~10.~~11. "National guard security officer or firefighter" means a participating member who is:

a. A security police employee of the North Dakota national guard; or

b. A firefighter employee of the North Dakota national guard.

~~11.~~12. "Participating member" means an eligible employee who through payment into the plan has established a claim against the plan.

~~12.~~13. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 13, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after August 1, 2005, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

~~13.~~14. "Permanent employee" means ~~a governmental unit~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.

~~14.~~15. "Prior service" means service or employment before July 1, 1966.

~~15.~~16. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.

~~16.~~17. "Public employees retirement system" means the retirement plan and program established by this chapter.

~~17.~~18. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan.

~~18.~~19. "Retirement board" or "board" means the governing authority created under section 54-52-03.

~~19.~~20. "Seasonal employee" means a participating member who does not work twelve months a year.

~~20.~~21. "Service" means employment on or after July 1, 1966.

~~21.~~22. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.

~~22.~~23. "Temporary employee" means ~~a governmental unit~~an employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 3. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials.

1. After December 31, 1999, ~~a person~~but before January 1, 2025, an individual elected or appointed to a state office for the first time must, from and after the date that ~~person~~individual qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the defined contribution retirement plan established under chapter 54-52.6.

2. After December 31, 2024, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a

participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.

3. As used in this section, the phrase "for the first time" means ~~a person~~an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that ~~person's~~individual's appointment.

SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

1. ~~Within~~Before January 1, 2025, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to ~~eight~~fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by ~~two~~one percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January ~~2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014~~2025.
2. If the temporary employee first enrolled:
   a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
   b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, 2025, who becomes a permanent employee after December 31, 2024, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.

4. After December 31, 2024, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.
5. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

SECTION 5. AMENDMENT. Section 54-52-02.11 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.11. Participation requirements for nonstate elected officials.

~~Elected~~

1. Before January 1, 2025, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.
2. After December 31, 2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

SECTION 6. AMENDMENT. Section 54-52-02.12 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.12. Participation requirements for nonstate appointed officials.

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, 2025, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.
2. After December 31, 2024, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

SECTION 7. Section 54-52-02.15 of the North Dakota Century Code is created and enacted as follows:

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

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

does not apply to an individual who before January 1, 2025, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.

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

SECTION 8. AMENDMENT. Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Each member must be assessed and required to pay monthly ~~four~~seven percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. ~~Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

SECTION 9. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

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

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered

employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 10. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee.

~~1.~~ ~~Each~~

1. ~~a.~~ As determined by actuarial valuations, each ~~state~~ governmental unit shall contribute to the defined benefit plan an amount ~~equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024~~on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of two hundred forty-six months, beginning January 1, 2026, and continuing through June 30, 2046. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.

   ~~b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.~~

   ~~c. For a participating member who first enrolls after December 31, 2019, the governmental unita participating political subdivision shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.~~

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the

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

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

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

SECTION 11. AMENDMENT. Section 54-52-14.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-14.3. Contract - Public employee retirement funds - Use and investment.

~~Any~~

1. An employee has a contract with the employer for purposes of retirement plan obligations arising out of a public employee retirement system under this chapter. A provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. This subsection does not prevent the state

from increasing or decreasing employee or employer contribution rates for a public employee retirement system under this chapter.

2. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of ~~that~~the retirement system, including the payment of system administrative costs.

SECTION 12. AMENDMENT. Subdivision b of subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

b. ~~Pursuant~~Subject to section 54-52-02.15 and pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17. A permanent employee or a temporary employee employed before August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

(1) The final average salary as calculated in section 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.

(2) The final average salary as calculated in section 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

~~**SECTION 15.** Section 54-52.2-09 of the North Dakota Century Code is created and enacted as follows:~~

~~**54-52.2-09. Employer match for members of defined contribution retirement plan.**~~

~~An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, 2024, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of~~

~~contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.~~

SECTION 13. AMENDMENT. Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-01. Definition of terms.

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

1. "Board" means the public employees retirement system board.
2. "Deferred member" means ~~a person who elected to receive deferred vested retirement benefits~~an individual who is not actively participating in the main plan under chapter 54-52 who has an account intact in the main plan under chapter 54-52.
3. "Eligible employee" ~~means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan~~, for employees who become participating members after December 31, 2024, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, 2025, the term includes a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services.
4. "Employee" means ~~any person~~an individual employed by ~~the state~~a governmental unit, whose compensation is paid out of ~~state~~the governmental unit's funds, or funds controlled or administered by ~~the state~~a governmental unit or paid by the federal government through any of its executive or administrative officials.

5. "Employer" means ~~the state of North Dakota~~a governmental unit.
6. "Governmental unit" means the state of North Dakota or a participating political subdivision of the state.
7. "Normal retirement date" is determined based on subsection 3 of section 54-52-17.
8. "Participating member" means an eligible employee who ~~elects to participate~~participates in the defined contribution retirement plan established under this chapter.

~~7.~~9. "Permanent employee" means ~~a state~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

~~8.~~10. "Temporary employee" means a governmental unit employee who is not an eligible employee due to not meeting the qualification of being a permanent employee, and who is not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 14. AMENDMENT. Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election ~~through December 31, 2024~~.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution

retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect ~~a person's~~an individual's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before January 1, 2025, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed before January 1, 2025, and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the

defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's re-employment and ending upon the expiration of six months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects <u>under this section</u> to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter

becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board of higher education who is eligible to participate in an alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution retirement plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

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

6. A participating member under this section who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee.

    a. The temporary employee electing to participate in the defined contribution retirement plan shall pay ~~monthly to the fund an amount equal to eight and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2~~into the plan as provided under section 54-52.6-09.6.

    b. An employer may not pay the temporary employee's contributions.

    c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the

employer are required to make any future retirement contributions on behalf of that employee.

8. After December 31, 2024, an eligible employee is no longer allowed to elect participation under this section.

SECTION 15. Section 54-52.6-02.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-02.1. Participation in defined contribution retirement plan.

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, 2025, an eligible employee who is first enrolled shall participate in the defined contribution retirement plan under this chapter.
2. A temporary employee may elect to participate in the defined contribution retirement plan as provided under section 54-52.6-09.6.
3. A county elected official may elect to participate in the defined contribution retirement plan as provided under section 54-52-02.11.
4. A nonstate appointed official shall participate in the defined contribution retirement plan as provided under section 54-52-02.12.

~~**SECTION 18.** Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:~~

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

~~1. As used in this section, "eligible employee" means a permanent state employee who on January 1, 2025, is a participating member of the public employees retirement system main system plan under chapter 54-42, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.~~

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

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

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

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

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

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

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

SECTION 16. AMENDMENT. Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances.

<u>1.</u> For an individual who elects <u>under section 54-52.6-02</u> to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment ~~prior to~~<u>before</u> receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

~~1.~~<u>a.</u> The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or

~~2.~~<u>b.</u> The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

<u>2.</u> The board shall calculate the amount to be transferred for persons employed after September 30, 2001, <u>and before January 1, 2025,</u> using only the formula contained in <u>subdivision b of</u> subsection ~~2~~<u>1</u>.

SECTION 17. AMENDMENT. Section 54-52.6-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-05. Direction of investments.

<u>1.</u> Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board. ~~The board shall follow~~

~~federal guidelines for establishing a qualified default investment alternative for contributions made by a participating member who fails to provide explicit investment direction. The qualified default investment alternative must include an in-plan annuity. If a participating member does not elect an investment option upon enrollment into the defined contribution retirement plan, the board shall automatically enroll the participating member into the qualified default investment alternative option.~~

2. The board shall provide an investment menu of investment options. In establishing the investment options, the board shall:
   a. Include predetermined investment portfolio options constructed to reflect different risk profiles that automatically reallocate and rebalance contributions as a participating member ages.
   b. Allow a participating member to construct an investment portfolio using some or all of the investment options.
3. The board shall provide a diversified menu of mutual funds and in-plan lifetime annuity options, either fixed, variable, or a combination of both. In selecting an annuity provider the board shall comply with section 54-52.6-05.1.

SECTION 18. Section 54-52.6-05.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-05.1. Annuity provider - Qualifications.

1. The board shall select one or more annuity providers to provide the annuity options under this chapter.
2. In selecting an annuity provider under this section, the board shall:
   a. Determine whether the annuity provider and the provider's subsidiaries and affiliates have appropriate financial strength and stability at the time of selection and during the term of contract with the board.
      (1) The board may require the provider to provide the board with written representation:
         (a) The provider is in compliance with title 26.1.
         (b) The provider at the time of selection is and for each of the preceding seven years was in compliance and good standing with the insurance

<u>commissioner of the provider's domiciliary state and the provider is not operating under an order of rehabilitation or liquidation.</u>

<u>(c) The provider maintains and has maintained reserves that satisfy the statutory requirements of each state in which the provider does business.</u>

<u>(2) The board may require a provider selected by the board to provide annuities under this chapter to notify the board of a change of circumstances resulting in the provider failing to meet any of the requirements under paragraph 1.</u>

<u>(3) The board must have determined the provider has a claims paying ability rating that meets standards adopted by the board.</u>

<u>b. Determine whether the annuity provider is able to provide contracted rights and benefits to a participating member.</u>

<u>c. Determine whether the costs, including fees and commissions, of the annuity options in relation to the benefits and product features of the annuity options are reasonable.</u>

<u>d. Determine whether the administrative services to be provided under the annuity option are appropriate. At a minimum the administrative services must include periodic reports to the board.</u>

<u>e. Determine whether the annuity provider is experienced in paying lifetime retirement income through annuities offered to public employee defined contribution retirement plans.</u>

<u>f. Determine whether the annuity provider offers a menu of annuity options that meet the following conditions:</u>

<u>(1) The annuity options are suitable for participating members and beneficiaries.</u>

<u>(2) The contract terms and income benefits are clearly stated, based on reasonable assumptions.</u>

<u>(3) The menu of annuity options offers a range of lifetime income options.</u>

<u>(4) If an annuity is a variable annuity, the annuity offers a fixed account option along with a variable option.</u>

g. Determine whether the annuity provider offers objective and participant-specific education and tools to help a participating member understand the appropriate use of annuities as a long-term retirement savings vehicle.

SECTION 19. AMENDMENT. Section 54-52.6-08 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-08. Credit of transfers.

The board shall promptly credit the plan account of a participating member who makes an election under ~~this chapter~~section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

~~**SECTION 24. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**54-52.6-09. Contributions - Penalty.**~~

~~1. Each~~

~~a. A participating member who first joined the defined contribution retirement plan before January 1, 2025, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.~~

~~b. A participating member who first joined the defined contribution retirement plan after December 31, 2024, shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.~~

~~c. This assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

~~2. The~~

~~a. For a participating member who first joined the defined contribution retirement plan before January 1, 2025, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.~~

~~b. For a participating member who first joined the defined contribution retirement plan after December 31, 2024, the employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

~~c. For membersa participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.~~

~~d. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.~~

~~e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are~~

~~paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.~~

~~3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.~~

SECTION 20. Section 54-52.6-09.5 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.5. Employer contribution for defined benefit plan.

In addition to the employer contribution under section 54-52.6-09, ~~a state~~an employer shall contribute to the defined benefit retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under section 54-52-06 less the amount of the required employer contribution under ~~sections 54-52.2-09 and~~section 54-52.6-09. If ~~a state~~an employer uses federal funds to pay any or all of an employee's wages, the employer shall use state or political subdivision funds to pay this additional contribution.

SECTION 21. Section 54-52.6-09.6 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.6. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. Monthly, the temporary employee shall contribute an amount equal to ~~nine~~fifteen and twenty-six hundredths percent times the temporary employee's present monthly salary~~, and may elect to contribute up to an additional six percent~~. An employer may not pay the temporary employee's contribution. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

SECTION 22. AMENDMENT. Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-10. Vesting.

1. A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:
   ~~1.~~a. Upon completion of two years of service, fifty percent.
   ~~2.~~b. Upon completion of three years of service, seventy-five percent.
   ~~3.~~c. Upon completion of four years of service, one hundred percent.
2. A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan ~~pursuant to this chapter~~under section 54-52.6-02 must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

~~**SECTION 28. AMENDMENT.** Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**54-52.6-13. Distributions.**~~

~~1. A participating member is eligible to receive distribution of that person'sindividual's accumulated balance in the plan upon becoming a former participating member.~~

~~2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's refund beneficiary, if any, as provided in this subsection. If the deceased participant designated an alternate refund beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subdivision d of subsection 3.~~

~~3. a. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:~~

~~a. (1) A lump sum distribution to the recipient.~~

~~b. (2) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.~~

~~c. (3) Periodic distributions, including annuities, as authorized by the board.~~

~~d. (4) No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.~~

~~b. A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in subdivisions a, b, or cparagraph 1, 2, or 3 of subdivision a if the surviving spouse is the sole refund beneficiary. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.~~

~~4. If the former participating member's vested account balance is less than one thousand dollars, the board shall automatically shall refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.~~

SECTION 23. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

1. The board shall provide information to employees who are eligible under section 54-52.6-02 to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter.
2. The board, or the board's vendor, shall provide to participating members:

a. Enrollment information that includes benefits of the defined contribution retirement plan, investment options available, the assumption of risk, and administrative and investment costs.

b. Ongoing investment and retirement income planning, including education on how to set, measure, and adjust income and saving goals based on desired retirement income and financial objectives, actual behavior, and changing circumstances.

c. Retirement income education, including distribution options available and in-plan annuitization options.

d. Advice and guidance information, tools, and services primarily focused on long-term planning and investing and life events that potentially influence and impact retirement savings.

3. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

SECTION 24. AMENDMENT. Section 54-52.6-19 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-19. Overpayments.

The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member under this chapter, refund beneficiary, or other person ~~who~~that has a claim to a distribution or any other benefit from a plan governed by this chapter.

SECTION 25. Section 54-52.6-22 of the North Dakota Century Code is created and enacted as follows:

54-52.6-22. Report to employee benefits programs committee.

Annually, the board shall provide a report to the employee benefits programs committee on the status of the defined contribution retirement plan under this chapter.

~~**SECTION 29.** Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:~~

~~**54-52.6-23. Savings clause - Plan modification.**~~

~~If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.~~

SECTION 26. REPEAL. Sections 54-52-06.5 and ~~54-52.6-03~~54-52-22 of the North Dakota Century Code are repealed.

~~**SECTION 31. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN.** During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.~~

SECTION 27. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND. The office of management and budget shall transfer $240,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 28. APPLICATION. ~~Subdivision a of subsection~~Subsection 1 of section 54-52-06, as amended under section ~~12~~10 of this Act, applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

SECTION 29. EFFECTIVE DATE. Sections ~~1, 3, 11, 34~~9, 26, and ~~35~~27 of this Act become effective ~~July~~August 1, 2023; ~~section 2,~~ sections ~~4~~1 through ~~10~~8, sections ~~13~~11 through ~~24~~19, and sections ~~26~~21 through ~~33~~25 of this Act become effective January 1, 2025; and sections ~~12~~10, ~~25~~20, and ~~36~~28 of this Act become effective January 1, 2026.

23.0280.05021
Title.

Prepared by the Legislative Council staff for
Senator Hogue
April 11, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 5, remove "section 6-09.4-10.1,"

Page 1, line 6, remove "21-10-13,"

Page 1, line 10, remove "and"

Page 1, line 10, after "54-52.6-19" insert ", and 57-51.1-07.5"

Page 1, line 10, remove "a transfer from the"

Page 1, line 11, remove "legacy earnings fund to the public employees retirement system main plan and"

Page 1, line 12, after "plans" insert "and the state share of oil and gas taxes"

Page 1, line 15, after "a" insert "legislative management"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 10

Page 2, remove lines 15 through 30

Page 3, remove lines 1 through 31

Page 4, overstrike lines 1 through 13

Page 13, line 14, remove "two hundred"

Page 13, line 15, replace "forty-six months" with "thirty and one-half years"

Page 13, line 16, replace "2046" with "2056"

Page 22, line 15, replace "January 1, 2025" with "December 31, 2024"

Page 24, line 24, remove "The board shall follow"

Page 24, remove lines 25 through 30

Page 27, line 2, overstrike "shall"

Page 27, line 2, after "promptly" insert "shall"

Page 27, line 11, after the second underscored comma insert "and an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 14, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 28, after the second underscored comma insert "and for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 28, line 2, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 30, line 19, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 32, line 16, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 33, after line 28, insert:

"**SECTION 31. AMENDMENT.** Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.5. State share of oil and gas taxes - Deposits.

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred million dollars into the state general fund;

2. The next two hundred million dollars into the tax relief fund;

3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;

4. The next two hundred million dollars into the state general fund;

5. The next ten million dollars into the lignite research fund;

6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars;

7. The next four hundred million dollars into the strategic investment and improvements fund;

8. The next sixty-five million to the public employees retirement fund;

9. The next fifty-nine million seven hundred fifty thousand dollars, or the amount necessary to provide for twice the amount of the distributions under subsection 2 of section 57-51.1-07.7, into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~9.~~10. The next one hundred seventy million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~10.~~11. The next twenty million dollars into the airport infrastructure fund; and

~~11.~~12. Any additional revenues into the strategic investment and improvements fund."

Page 34, line 9, replace "$240,000,000" with "$135,000,000"

Page 34, line 16, replace "1, 3, 11, 34 and 35" with "9, 31, 33, and 34"

Page 34, line 17, replace "July" with "August"

Page 34, line 17, remove "section 2,"

Page 34, line 17, replace "4" with "1"

Page 34, line 17, replace "10" with "8"

Page 34, line 17, replace "13" with "11"

Page 34, line 17, replace "24" with "22"

Page 34, line 17, replace "26" with "24"

Page 34, line 18, replace "33" with "32"

Page 34, line 18, replace "12, 25, and 36" with "10, 23, and 35"

Renumber accordingly

#27525

2023 - 2025 Institution Capital Projects Plan
Revised 04/07/2023

Institution	Project Title	Project Total	Funding Source: Strategic Investment and Improvement Fund	Funding Source: Capital Building Funds (12)	Funding Source: Local Match	Project Type
DCB	Old Main/Center for Rural Health Education	5,800,000	3,300,000	1,000,000	1,500,000	Major renovation to existing facility
LRSC	Wind Turbine Gearbox Replacement/Parking Lot	1,000,000	0	1,000,000	0	Equipment repair & parking lot
MaSU	Old Main Renovation	49,970,100	42,200,000	2,330,087	5,440,013	
MiSU	Dakota Residence Hall Demolition	765,000	765,000	0	0	Removal of facility
NDSU	Center for Engineering & Computational Sciences	84,000,000	59,000,000	0	25,000,000	New construction with major renovation to existing facility
UND	Science, Engineering & Natural Security Corridor	82,000,000	57,400,000	0	24,600,000	
WSC	Medical Healthcare Building	36,600,000	25,962,053	637,947	10,000,000	New construction
DSU	Agriculture & Technical Education Buildings	18,000,000	17,100,000		900,000	
Total		**278,135,100**	**205,727,053**	**4,968,034**	**67,440,013**	

Universities/colleges are required to have the local pledge/other funds secured before any General Funds can be disbursed for the projects.

Any inflationary or other costs that exceed the project total would have to be paid through local/special funds and the obligation of the state would remain as detailed above.

The cost of the project can be less than the project total as detailed above. However, the local match percentage requirement will still remain the same and correlate to the project total.

Other funds can be used for the planning process of a project. However, the amount spent for the planning and etc. can not be counted toward the local match.

Any additional funds over the local match requirement can be used for the project.
Funding source would be through the SIIF (Strategic Investment and Improvement Fund).

DCB- $1,000,000 Tier III 2019-21 & Tier III 2023-25; MaSU -$2,330,087 Tier II & III 2019-21, 2021-23 & 2023-25; LRSC- $1,000,000 Tier III 2021-23 & Tier III 2023-25; WSC - $637,947 Tier II & III 2021-23.

	Capital Building Funds	
DCB	1,000,000	19-21- $500,000; 23-25 $500,000
MaSU	2,330,087	19-21- $610,029; 21-23 $740,029; 23-25 $980,058
WSC	637,947	21-23-$637,947
LRSC	1,000,000	21-23-$500,000; 23-25-$500,000.
Total	4,968,034	

#27526

4/-

23.0232.02005
Title.

Prepared by the Legislative Council staff for Senator Sorvaag
April 6, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1003

Page 1, line 2, after "enact" insert "a new section to chapter 6-09,"

Page 1, line 2, after "15-10" insert a comma

Page 1, line 3, after "to" insert "an economic diversification research fund,"

Page 15, after line 10, insert:

"**SECTION 18.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Economic diversification research fund - Report to legislative management.

1. There is created in the state treasury the economic diversification research fund. The fund consists of all moneys deposited in the fund under section 21-10-13. Moneys in the fund may be spent by the Bank of North Dakota pursuant to legislative appropriations to provide grants to institutions under the control of the state board of higher education for economic diversification research.

2. In consultation with representatives of North Dakota state university and the university of North Dakota, the Bank, in consultation with the state board of higher education, shall award grants to institutions under the control of the state board of higher education. Up to ninety percent of the funding must be awarded to North Dakota state university and the university of North Dakota with equal amounts awarded to each institution. The remaining funding must be awarded to the other institutions under the control of the state board of higher education, as determined by the board. The state board of higher education may not award more than fifty percent of the available funding during the first year of the biennium. The Bank of North Dakota shall distribute the grant funding as awarded by the state board of higher education.

3. The state board of higher education shall develop guidelines for the economic diversification research grants. The purpose of the grants is to stimulate economic activity across the state through innovation of new technology, concepts, and products; to promote job creation and career and wage growth; to enhance health care outcomes; to address loss of revenue and jobs in communities with economies that depend primarily on the fossil fuel industry; and to provide experiential learning opportunities for students. Research projects may be initiated by an institution under the control of the state board of higher education or by the private sector. The guidelines must include consideration for research projects with matching funds and provisions for grant oversight by an internal advisory committee and an external advisory committee.

4. The state board of higher education shall develop reporting requirements for the institutions under the control of the board. The reporting

requirements must include criteria for assessing performance outcomes related to the grants. The state board of higher education shall compile the reports and submit a comprehensive report annually to the legislative management. The comprehensive report must include information on how the research efforts by each institution align with the state's priorities, how the institutions collaborate when appropriate, and how the outcomes of the research meet established performance expectations."

Renumber accordingly

23.0280.05023

Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED HOUSE BILL NO. 1040

Introduced by

Legislative Management

(Retirement Committee)

A BILL for an Act to create and enact sections 54-52-02.15, 54-52.2-09, 54-52.6-02.1, 54-52.6-02.2, 54-52.6-05.1, 54-52.6-09.5, 54-52.6-09.6, 54-52.6-22, and 54-52.6-23 of the North Dakota Century Code, relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan; to amend and reenact ~~section 6-09.4-10.1,~~ paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3, sections ~~21-10-13,~~ 54-52-01, 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, subsection 2 of section 54-52-05, sections 54-52-06 and 54-52-14.3, subdivision b of subsection 1 of section 54-52-17.2, and sections 54-52.6-01, 54-52.6-02, 54-52.6-03, 54-52.6-05, 54-52.6-08, 54-52.6-09, 54-52.6-10, 54-52.6-13, 54-52.6-15, ~~and~~ 54-52.6-19, and 57-51.1-07.5 of the North Dakota Century Code, relating to ~~a transfer from the legacy earnings fund to the public employees retirement system main plan and~~ the public employees retirement system defined benefit and defined contribution retirement plans and the state share of oil and gas taxes; to repeal sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code, relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan; to provide for a legislative management study; to provide for a transfer; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 6-09.4-10.1 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**6-09.4-10.1. Legacy sinking and interest fund - Debt service requirements - Public finance authority.**~~

~~There is created in the state treasury the legacy sinking and interest fund. The fund consists of all moneys deposited in the fund under section 21-10-13. Moneys in the fund may be spent~~

~~by the public finance authority pursuant to legislative appropriations to meet the debt service requirements for evidences of indebtedness issued by the authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs. Any moneys in the fund in excess of the amounts appropriated from the fund to meet the debt service requirements for a biennium must be transferred by the state treasurer to the public employees retirement system main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and then subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent.~~

SECTION 1. AMENDMENT. Paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

(1) The public employees retirement system<u>, except an "eligible employee" as that term is defined under section 54-52-02.15</u>.

~~**SECTION 3. AMENDMENT.** Section 21-10-13 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**21-10-13. Legacy earnings fund - State treasurer - Transfers.**~~

~~1. There is created in the state treasury the legacy earnings fund. The fund consists of all moneys transferred to the fund under subsection 2 and all interest and earnings upon moneys in the fund.~~

~~2. Any legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota must be immediately transferred by the state treasurer to the legacy earnings fund.~~

~~3. For each biennium subsequent to the biennium in which the legacy fund earnings are transferred under subsection 2, the amount available for appropriation from the legacy earnings fund is seven percent of the five-year average value of the legacy fund assets as reported by the state investment board. The average value of the legacy fund assets must be calculated using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.~~

~~4. On July first of each odd-numbered year, from the amount available for appropriation or transfer from the legacy earnings fund for the biennium, the state treasurer shall transfer funding in the following order:~~

~~a. The lesser of the first one hundred fifty million dollars or an amount equal to any legislative appropriations to meet the debt service requirements for a biennium for evidences of indebtedness issued by the public finance authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs to the legacy sinking and interest fund under section 6-09.4-10.1.~~

~~b. The next seventy million dollars to the public employees retirement system for administrative expenses for chapters 54-52 and 54-52.6 and for the unfunded liability of the main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent as reported for the most recently completed even-numbered fiscal year.~~

~~c. The next sixty million dollars to the highway tax distribution fund for allocations under section 54-27-19.~~

~~c.d. Any remaining funds for other purposes as designated by the legislative assembly, including:~~

~~(1) Up to fifty million dollars for tax relief pursuant to appropriations or transfers authorized by the legislative assembly;~~

~~(2) Up to thirty million dollars to the clean sustainable energy fund pursuant to appropriations or transfers authorized by the legislative assembly; and~~

~~(3) Up to thirty million dollars for university research programs, the innovation loan fund to support technology advancement, and workforce enrichment initiatives pursuant to appropriations or transfers authorized by the legislative assembly.~~

~~5. If the amounts transferred under subsection 2 exceed the amount available for appropriation under subsection 3, an amount equal to any appropriations from the legacy sinking and interest fund for bond payments under section 6-09.4-10.1 must be retained in the legacy earnings fund through June 30, 2025, after which an amount equal to twice any appropriations from the legacy sinking and interest fund under section 6-09.4-10.1 for bond payments, but not more than one hundred fifty million dollars, must be retained in the legacy earnings fund. After deducting any amounts to be retained in the legacy earnings fund, the state treasurer shall transfer, within thirty days, any remaining amounts under this subsection in the following order:~~

~~a. The first one hundred million dollars to the legacy fund to become part of the principal.~~

~~b. Any remaining amount to the strategic investment and improvements fund to be used in accordance with the provisions of section 15-08.1-08.~~

SECTION 2. AMENDMENT. Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52-01. Definition of terms.

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. "Deferred member" means a participating member who is not actively participating in the main plan under this chapter and who has an account intact in the main plan under this chapter.
5. "Eligible employee", except as otherwise provided under section 54-52-02.15, means ~~all~~a permanent ~~employees~~employee who ~~meet~~meets all of the eligibility requirements set by this chapter and who ~~are~~is eighteen years or more of age~~, and~~. The term

includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. ~~Eligible employee~~The term does not include nonclassified state employees who ~~elect~~elected under section 54-52.6-02 to become members of the retirement plan established under chapter 54-52.6 ~~but~~. The term does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board of higher education.

~~5.~~6. "Employee" means any individual employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

~~6.~~7. "Employer" means a governmental unit.

~~7.~~8. "Firefighter" means a participating member who is employed as a firefighter by a political subdivision and, notwithstanding subsection 13, for an individual employed after July 31, 2017, is employed at least thirty-two hours per week and at least twenty weeks each year of employment. A firefighter who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after July 31, 2017, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system. The term does not include a firefighter employee of the North Dakota national guard.

~~8.~~9. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.

~~9.~~10. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision ~~thereof~~of the state.

~~10.~~11. "National guard security officer or firefighter" means a participating member who is:

a. A security police employee of the North Dakota national guard; or

b. A firefighter employee of the North Dakota national guard.

~~11.~~12. "Participating member" means an eligible employee who through payment into the plan has established a claim against the plan.

~~12.~~13. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 13, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after August 1, 2005, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

~~13.~~14. "Permanent employee" means ~~a governmental unit~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.

~~14.~~15. "Prior service" means service or employment before July 1, 1966.

~~15.~~16. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.

~~16.~~17. "Public employees retirement system" means the retirement plan and program established by this chapter.

~~17.~~18. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan.

~~18.~~19. "Retirement board" or "board" means the governing authority created under section 54-52-03.

~~19.~~20. "Seasonal employee" means a participating member who does not work twelve months a year.

~~20.~~<u>21.</u> "Service" means employment on or after July 1, 1966.

~~21.~~<u>22.</u> "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.

~~22.~~<u>23.</u> "Temporary employee" means ~~a governmental unit~~<u>an</u> employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 3. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials.

<u>1.</u> After December 31, 1999, ~~a person~~<u>but before January 1, 2025, an individual</u> elected or appointed to a state office for the first time must, from and after the date that ~~person~~<u>individual</u> qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the <u>defined contribution</u> retirement plan established under chapter 54-52.6.

<u>2.</u> <u>After December 31, 2024, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a</u>

participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.

3. As used in this section, the phrase "for the first time" means ~~a person~~an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that ~~person's~~individual's appointment.

SECTION 4. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees.

1. ~~Within~~Before January 1, 2025, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to ~~eight~~fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by ~~two~~one percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January ~~2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014~~2025.
2. If the temporary employee first enrolled:
   a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
   b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, 2025, who becomes a permanent employee after December 31, 2024, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.

4. After December 31, 2024, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.

5. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

SECTION 5. AMENDMENT. Section 54-52-02.11 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.11. Participation requirements for nonstate elected officials.

~~Elected~~

1. Before January 1, 2025, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.

2. After December 31, 2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

SECTION 6. AMENDMENT. Section 54-52-02.12 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.12. Participation requirements for nonstate appointed officials.

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, 2025, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.

2. After December 31, 2024, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

SECTION 7. Section 54-52-02.15 of the North Dakota Century Code is created and enacted as follows:

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

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

does not apply to an individual who before January 1, 2025, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.

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

SECTION 8. AMENDMENT. Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Each member must be assessed and required to pay monthly ~~four~~seven percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. ~~Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

SECTION 9. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the ~~legislative assembly~~employee benefits programs committee.

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

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered

employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

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

4. ~~The~~Annually, the board shall report to ~~each session of the legislative assembly~~the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 10. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee.

~~1.~~ ~~Each~~

1. a. As determined by actuarial valuations, each state governmental unit shall contribute to the defined benefit plan an amount ~~equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024~~on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of ~~two hundred forty-six months~~thirty and one-half years, beginning January 1, 2026, and continuing through June 30, ~~2046~~2056. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.

   b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.

   c. For a participating member who first enrolls after December 31, 2019, ~~the governmental unit~~a participating political subdivision shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition,

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

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

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

SECTION 11. AMENDMENT. Section 54-52-14.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-14.3. Public employee retirement funds - Use and investment.

Any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of ~~that~~the retirement system, including the payment of system administrative costs.

SECTION 12. AMENDMENT. Subdivision b of subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

b. ~~Pursuant~~Subject to section 54-52-02.15 and pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17. A permanent employee or a temporary employee employed before August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

(1) The final average salary as calculated in section 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.

(2) The final average salary as calculated in section 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

SECTION 13. Section 54-52.2-09 of the North Dakota Century Code is created and enacted as follows:

54-52.2-09. Employer match for members of defined contribution retirement plan.

An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, 2024, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.

SECTION 14. AMENDMENT. Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-01. Definition of terms.

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

1. "Board" means the public employees retirement system board.
2. "Deferred member" means ~~a person who elected to receive deferred vested retirement benefits~~an individual who is not actively participating in the main plan under chapter 54-52 who has an account intact in the main plan under chapter 54-52.
3. "Eligible employee" ~~means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan~~, for employees who become participating members after December 31, 2024, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, 2025, the term includes a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services.
4. "Employee" means ~~any person~~an individual employed by ~~the state~~a governmental unit, whose compensation is paid out of ~~state~~the governmental unit's funds, or funds controlled or administered by ~~the state~~a governmental unit or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means ~~the state of North Dakota~~a governmental unit.
6. "Governmental unit" means the state of North Dakota or a participating political subdivision of the state.

7. "Normal retirement date" is determined based on subsection 3 of section 54-52-17.

8. "Participating member" means an eligible employee who ~~elects to participate~~participates in the defined contribution retirement plan established under this chapter.

~~7.~~9. "Permanent employee" means ~~a state~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

~~8.~~10. "Temporary employee" means a governmental unit employee who is not an eligible employee due to not meeting the qualification of being a permanent employee, and who is not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

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

SECTION 15. AMENDMENT. Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election through December 31, 2024.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an

eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect ~~a person's~~an individual's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before January 1, 2025, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed before January 1, 2025, and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on

the date of the individual's re-employment and ending upon the expiration of six months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects <u>under this section</u> to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the

jurisdiction of the board <u>of higher education</u> who is eligible to participate in an alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution <u>retirement</u> plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

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

6. A participating member <u>under this section</u> who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee

status. The participating member may not become a member of the defined benefit plan as a temporary employee.

a. The temporary employee electing to participate in the defined contribution retirement plan shall pay ~~monthly to the fund an amount equal to eight and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2~~into the plan as provided under section 54-52.6-09.6.

b. An employer may not pay the temporary employee's contributions.

c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.

8. After December 31, 2024, an eligible employee is no longer allowed to elect participation under this section.

SECTION 16. Section 54-52.6-02.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-02.1. Participation in defined contribution retirement plan.

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, 2025, an eligible employee who is first enrolled shall participate in the defined contribution retirement plan under this chapter.
2. A temporary employee may elect to participate in the defined contribution retirement plan as provided under section 54-52.6-09.6.
3. A county elected official may elect to participate in the defined contribution retirement plan as provided under section 54-52-02.11.
4. A nonstate appointed official shall participate in the defined contribution retirement plan as provided under section 54-52-02.12.

SECTION 17. Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:

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

1. As used in this section, "eligible employee" means a permanent state employee who on ~~January 1, 2025~~December 31, 2024, is a participating member of the public employees retirement system main system plan under chapter 54-42, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.
2. The board shall provide a three-month election period, from January 1, 2025, through March 31, 2025, for an eligible employee to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board.
    a. An election under this section made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable.
    b. For an eligible employee who elects to transfer from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the member's account in the defined contribution retirement plan under this chapter. However, if the eligible employee

terminates employment before receiving the lump sum transfer under this section, the election made is ineffective and the eligible employee remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter.

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

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

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

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

SECTION 18. AMENDMENT. Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances.

1. For an individual who elects under section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual

terminates employment ~~prior to~~before receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

~~1.~~a. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or

~~2.~~b. The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

2. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, and before January 1, 2025, using only the formula contained in subdivision b of subsection ~~2~~1.

SECTION 19. AMENDMENT. Section 54-52.6-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-05. Direction of investments.

1. Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board. ~~The board shall follow federal guidelines for establishing a qualified default investment alternative for contributions made by a participating member who fails to provide explicit investment direction. The qualified default investment alternative must include an in-plan annuity. If a participating member does not elect an investment option upon enrollment into the~~

~~defined contribution retirement plan, the board shall automatically enroll the participating member into the qualified default investment alternative option.~~

2. The board shall provide an investment menu of investment options. In establishing the investment options, the board shall:
   a. Include predetermined investment portfolio options constructed to reflect different risk profiles that automatically reallocate and rebalance contributions as a participating member ages.
   b. Allow a participating member to construct an investment portfolio using some or all of the investment options.
3. The board shall provide a diversified menu of mutual funds and in-plan lifetime annuity options, either fixed, variable, or a combination of both. In selecting an annuity provider the board shall comply with section 54-52.6-05.1.

SECTION 20. Section 54-52.6-05.1 of the North Dakota Century Code is created and enacted as follows:

54-52.6-05.1. Annuity provider - Qualifications.

1. The board shall select one or more annuity providers to provide the annuity options under this chapter.
2. In selecting an annuity provider under this section, the board shall:
   a. Determine whether the annuity provider and the provider's subsidiaries and affiliates have appropriate financial strength and stability at the time of selection and during the term of contract with the board.
      (1) The board may require the provider to provide the board with written representation:
         (a) The provider is in compliance with title 26.1.
         (b) The provider at the time of selection is and for each of the preceding seven years was in compliance and good standing with the insurance commissioner of the provider's domiciliary state and the provider is not operating under an order of rehabilitation or liquidation.
         (c) The provider maintains and has maintained reserves that satisfy the statutory requirements of each state in which the provider does business.

(2) The board may require a provider selected by the board to provide annuities under this chapter to notify the board of a change of circumstances resulting in the provider failing to meet any of the requirements under paragraph 1.

(3) The board must have determined the provider has a claims paying ability rating that meets standards adopted by the board.

b. Determine whether the annuity provider is able to provide contracted rights and benefits to a participating member.

c. Determine whether the costs, including fees and commissions, of the annuity options in relation to the benefits and product features of the annuity options are reasonable.

d. Determine whether the administrative services to be provided under the annuity option are appropriate. At a minimum the administrative services must include periodic reports to the board.

e. Determine whether the annuity provider is experienced in paying lifetime retirement income through annuities offered to public employee defined contribution retirement plans.

f. Determine whether the annuity provider offers a menu of annuity options that meet the following conditions:

(1) The annuity options are suitable for participating members and beneficiaries.

(2) The contract terms and income benefits are clearly stated, based on reasonable assumptions.

(3) The menu of annuity options offers a range of lifetime income options.

(4) If an annuity is a variable annuity, the annuity offers a fixed account option along with a variable option.

g. Determine whether the annuity provider offers objective and participant-specific education and tools to help a participating member understand the appropriate use of annuities as a long-term retirement savings vehicle.

SECTION 21. AMENDMENT. Section 54-52.6-08 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-08. Credit of transfers.

The board ~~shall~~ promptly shall credit the plan account of a participating member who makes an election under ~~this chapter~~section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

SECTION 22. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

1. ~~Each~~

    a. A participating member who first joined the defined contribution retirement plan before January 1, 2025, and an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.

    b. A participating member who first joined the defined contribution retirement plan after December 31, 2024, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly four percent of the monthly salary or wage paid to the participant~~, and this~~. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.

    c. This assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. ~~Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

2. ~~The~~

    a. For a participating member who first joined the defined contribution retirement plan before January 1, 2025, and for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.

b. For a participating member who first joined the defined contribution retirement plan after December 31, 2024, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, the employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1. ~~Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

c. For ~~members~~a participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.

d. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.

e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

SECTION 23. Section 54-52.6-09.5 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.5. Employer contribution for defined benefit plan.

In addition to the employer contribution under section 54-52.6-09, a state employer shall contribute to the defined benefit retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under section 54-52-06 less the amount of the required employer contribution under sections 54-52.2-09 and 54-52.6-09. If a state employer uses federal funds to pay any or all of an employee's wages, the employer shall use state funds to pay this additional contribution.

SECTION 24. Section 54-52.6-09.6 of the North Dakota Century Code is created and enacted as follows:

54-52.6-09.6. Participation by temporary employees.

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional six percent. An employer may not pay the temporary employee's contribution. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

SECTION 25. AMENDMENT. Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-10. Vesting.

1. A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:
   ~~1.~~a. Upon completion of two years of service, fifty percent.
   ~~2.~~b. Upon completion of three years of service, seventy-five percent.
   ~~3.~~c. Upon completion of four years of service, one hundred percent.
2. A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan ~~pursuant to this chapter~~under section 54-52.6-02 or 54-52.6-02.2 must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

SECTION 26. AMENDMENT. Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that ~~person's~~individual's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's refund beneficiary, if any, as provided in this subsection. If the deceased participant designated an alternate refund beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subdivision d of subsection 3.
3. a. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:
   ~~a.~~ (1) A lump sum distribution to the recipient.
   ~~b.~~ (2) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
   ~~c.~~ (3) Periodic distributions, including annuities, as authorized by the board.

~~d.~~ (4) No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

b. A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in ~~subdivisions a, b, or c~~paragraph 1, 2, or 3 of subdivision a if the surviving spouse is the sole refund beneficiary. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than one thousand dollars, the board ~~shall~~ automatically shall refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 27. AMENDMENT. Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-15. Board to provide information.

1. The board shall provide information to employees who are eligible under section 54-52.6-02 or 54-52.6-02.2 to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter.

2. The board, or the board's vendor, shall provide to participating members:

   a. Enrollment information that includes benefits of the defined contribution retirement plan, investment options available, the assumption of risk, and administrative and investment costs.

   b. Ongoing investment and retirement income planning, including education on how to set, measure, and adjust income and saving goals based on desired retirement income and financial objectives, actual behavior, and changing circumstances.

c. Retirement income education, including distribution options available and in-plan annuitization options.

d. Advice and guidance information, tools, and services primarily focused on long-term planning and investing and life events that potentially influence and impact retirement savings.

3. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

SECTION 28. AMENDMENT. Section 54-52.6-19 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-19. Overpayments.

The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member under this chapter, refund beneficiary, or other person ~~who~~that has a claim to a distribution or any other benefit from a plan governed by this chapter.

SECTION 29. Section 54-52.6-22 of the North Dakota Century Code is created and enacted as follows:

54-52.6-22. Report to employee benefits programs committee.

Annually, the board shall provide a report to the employee benefits programs committee on the status of the defined contribution retirement plan under this chapter.

SECTION 30. Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:

54-52.6-23. Savings clause - Plan modification.

If the board determines any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 31. AMENDMENT. Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.5. State share of oil and gas taxes - Deposits.

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred million dollars into the state general fund;
2. The next two hundred million dollars into the tax relief fund;
3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;
4. The next two hundred million dollars into the state general fund;
5. The next ten million dollars into the lignite research fund;
6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars;
7. The next four hundred million dollars into the strategic investment and improvements fund;
8. The next sixty-five million to the public employees retirement fund for the main system plan;
9. The next fifty-nine million seven hundred fifty thousand dollars, or the amount necessary to provide for twice the amount of the distributions under subsection 2 of section 57-51.1-07.7, into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~9.~~10. The next one hundred seventy million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into the funds designated for infrastructure development in non-oil-producing counties under sections

57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~10.~~11. The next twenty million dollars into the airport infrastructure fund; and

~~11.~~12. Any additional revenues into the strategic investment and improvements fund.

SECTION 32. REPEAL. Sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code are repealed.

SECTION 33. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN. During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 34. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM MAIN RETIREMENT PLAN. During the 2023-24 interim, the legislative management shall study best practices for public employee retirement plans, including defined benefit plans, defined contribution plans, and hybrid plans such as side-by-side hybrid plans, cash benefit plans, and stacked hybrid plans. The study must include development of legislation to implement the retirement plan best suited to meet the needs of the state, political subdivisions, and public employees. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 35. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND. The office of management and budget shall transfer ~~$240,000,000~~$135,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 36. APPLICATION. Subdivision a of subsection 1 of section 54-52-06, as amended under section 12 of this Act, applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

SECTION 37. EFFECTIVE DATE. Sections ~~1, 3, 11, 34 and 35~~9, 31, 33, 34, and 35 of this Act become effective ~~July~~August 1, 2023; ~~section 2,~~ sections ~~4~~1 through ~~10~~8, sections ~~13~~11 through ~~24~~22, and sections ~~26~~24 through ~~33~~32 of this Act become effective January 1, 2025; and sections ~~12, 25~~10, 23, and 36 of this Act become effective January 1, 2026.

23.0280.05023
Title.

Prepared by the Legislative Council staff for the Senate Appropriations Committee
April 12, 2023

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 1, line 5, remove "section 6-09.4-10.1,"

Page 1, line 6, remove "21-10-13,"

Page 1, line 10, remove "and"

Page 1, line 10, after "54-52.6-19" insert ", and 57-51.1-07.5"

Page 1, line 10, remove "a transfer from the"

Page 1, line 11, remove "legacy earnings fund to the public employees retirement system main plan and"

Page 1, line 12, after "plans" insert "and the state share of oil and gas taxes"

Page 1, line 15, after "a" insert "legislative management"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 10

Page 2, remove lines 15 through 30

Page 3, remove lines 1 through 31

Page 4, overstrike lines 1 through 13

Page 13, line 14, remove "two hundred"

Page 13, line 15, replace "forty-six months" with "thirty and one-half years"

Page 13, line 16, replace "2046" with "2056"

Page 22, line 15, replace "January 1, 2025" with "December 31, 2024"

Page 24, line 24, remove "The board shall follow"

Page 24, remove lines 25 through 30

Page 27, line 2, overstrike "shall"

Page 27, line 2, after "promptly" insert "shall"

Page 27, line 11, after the second underscored comma insert "and an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 14, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 27, line 28, after the second underscored comma insert "and for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 28, line 2, after the second underscored comma insert "except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2,"

Page 30, line 19, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 32, line 16, after "54-52.6-02" insert "or 54-52.6-02.2"

Page 33, after line 28, insert:

"**SECTION 31. AMENDMENT.** Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.5. State share of oil and gas taxes - Deposits.

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred million dollars into the state general fund;

2. The next two hundred million dollars into the tax relief fund;

3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;

4. The next two hundred million dollars into the state general fund;

5. The next ten million dollars into the lignite research fund;

6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars;

7. The next four hundred million dollars into the strategic investment and improvements fund;

8. The next sixty-five million to the public employees retirement fund for the main system plan;

9. The next fifty-nine million seven hundred fifty thousand dollars, or the amount necessary to provide for twice the amount of the distributions under subsection 2 of section 57-51.1-07.7, into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~9.~~10. The next one hundred seventy million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

~~10.~~11. The next twenty million dollars into the airport infrastructure fund; and

~~11.~~12. Any additional revenues into the strategic investment and improvements fund."

Page 34, after line 6, insert:

"**SECTION 34. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM MAIN RETIREMENT PLAN.** During the 2023-24 interim, the legislative management shall study best practices for public employee retirement plans, including defined benefit plans, defined contribution plans, and hybrid plans such as side-by-side hybrid plans, cash benefit plans, and stacked hybrid plans. The study must include development of legislation to implement the retirement plan best suited to meet the needs of the state, political subdivisions, and public employees. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Page 34, line 9, replace "$240,000,000" with "$135,000,000"

Page 34, line 16, replace "1, 3, 11, 34 and 35" with "9, 31, 33, 34, and 35"

Page 34, line 17, replace "July" with "August"

Page 34, line 17, remove "section 2,"

Page 34, line 17, replace "4" with "1"

Page 34, line 17, replace "10" with "8"

Page 34, line 17, replace "13" with "11"

Page 34, line 17, replace "24" with "22"

Page 34, line 17, replace "26" with "24"

Page 34, line 18, replace "33" with "32"

Page 34, line 18, replace "12, 25" with "10, 23"

Renumber accordingly