

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2239

Introduced by

Senators Cleary, Dever

Representative Boschee

1 A BILL for an Act to amend and reenact subsection 4 of section 54-52-01, subsection 1 of
2 section 54-52-02.9, subsection 2 of section 54-52-05, subsection 1 of section 54-52-06,
3 sections 54-52.6-01 and 54-52.6-02, subsection 1 of section 54-52.6-09, and section
4 54-52.6-10 of the North Dakota Century Code, relating to public employees retirement system
5 main system plan employer and employee contribution rates and participation in the public
6 employees retirement system defined contribution plan; to provide an appropriation; to provide
7 for application; and to provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Subsection 4 of section 54-52-01 of the North Dakota Century
10 Code is amended and reenacted as follows:

11 4. "Eligible employee" means all permanent employees who meet all of the eligibility
12 requirements set by this chapter and who are eighteen years or more of age, and
13 includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and
14 54-52-02.12, and nonteaching employees of the superintendent of public instruction,
15 including the superintendent of public instruction, who elect to transfer from the
16 teachers' fund for retirement to the public employees retirement system under section
17 54-52-02.13, and employees of the state board for career and technical education who
18 elect to transfer from the teachers' fund for retirement to the public employees
19 retirement system under section 54-52-02.14. Eligible employee does not include
20 ~~nonclassified~~ state employees who elect to become members of the retirement plan
21 established under chapter 54-52.6 ~~but does include employees of the judicial branch~~
22 ~~and employees of the board of higher education and state institutions under the~~
23 ~~jurisdiction of the board.~~

1 **SECTION 2. AMENDMENT.** Subsection 1 of section 54-52-02.9 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 1. Within one hundred eighty days of beginning employment, a temporary employee may
4 elect to participate in the public employees retirement system and receive credit for
5 service after enrollment. Monthly, the temporary employee shall pay to the fund an
6 amount equal to eight and twelve hundredths percent times the temporary employee's
7 present monthly salary. The amount required to be paid by a temporary employee
8 increases by two percent times the temporary employee's present monthly salary
9 beginning with the monthly reporting period of January 2012, and with an additional
10 two percent increase, beginning with the reporting period of January 2013, ~~and~~ with an
11 additional increase of two percent, beginning with the monthly reporting period of
12 January 2014, and with an additional increase of one percent, beginning with the
13 monthly reporting period of January 2024.

14 **SECTION 3. AMENDMENT.** Subsection 2 of section 54-52-05 of the North Dakota Century
15 Code is amended and reenacted as follows:

16 2. Each member must be assessed and required to pay monthly four percent of the
17 monthly salary or wage paid to the member, and such assessment must be deducted
18 and retained out of such salary in equal monthly installments commencing with the
19 first month of employment. Member contributions increase by one percent of the
20 monthly salary or wage paid to the member beginning with the monthly reporting
21 period of January 2012, ~~and~~ with an additional increase of one percent, beginning with
22 the monthly reporting period of January 2013, ~~and~~ with an additional increase of one
23 percent, beginning with the monthly reporting period of January 2014, and with an
24 additional increase of one percent, beginning with the monthly reporting period of
25 January 2024.

26 **SECTION 4. AMENDMENT.** Subsection 1 of section 54-52-06 of the North Dakota Century
27 Code is amended and reenacted as follows:

28 1. ~~Each~~As determined by actuarial valuations, each governmental unit shall contribute to
29 the defined benefit plan an amount equal to ~~four and twelve-hundredths percent of the~~
30 ~~monthly salary or wage of a participating member. Governmental unit contributions~~
31 ~~increase by one percent of the monthly salary or wage of a participating member~~

1 beginning with the monthly reporting period of January 2012; with an additional
2 increase of one percent, beginning with the reporting period of January 2013; and with
3 an additional increase of one percent, beginning with the monthly reporting period of
4 January 2014. For a participating member who first enrolls after December 31, 2019,
5 the governmental unit shall contribute an additional amount equal to one and fourteen
6 hundredths percent of the monthly salary or wage of the participating member on a
7 level percent of compensation basis for all main system defined benefit retirement plan
8 employees sufficient under the actuarial valuation to meet both the normal cost plus
9 the actuarially determined amount required to amortize the unfunded accrued liability
10 of the main system plan over a closed period of thirty and one-half years, beginning
11 January 1, 2024, and continuing through June 30, 2054. By November fifteenth of
12 each even-numbered year the board shall publish the contribution rate required under
13 this subsection. The board shall calculate this rate based on the July first actuarial
14 report of that year.

15 **SECTION 5. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **54-52.6-01. Definition of terms.**

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

- 19 1. "Board" means the public employees retirement system board.
- 20 2. ~~"Deferred member" means a person who elected to receive deferred vested retirement~~
21 ~~benefits under chapter 54-52.~~
- 22 3. "Eligible employee" means a permanent state employee, ~~except an employee of the~~
23 ~~judicial branch or an employee of the board of higher education and state institutions~~
24 ~~under the jurisdiction of the board, who is eighteen years or more of age and who is in~~
25 ~~a position not classified by North Dakota human resource management services. If a~~
26 ~~participating member loses permanent employee status and becomes a temporary~~
27 ~~employee, the member may still participate in the defined contribution retirement plan~~
28 who elects to participate in the retirement plan under this chapter.
- 29 4.3. "Employee" means ~~any person~~ an individual employed by the state, whose
30 compensation is paid out of state funds, or funds controlled or administered by the

1 state or paid by the federal government through any of its executive or administrative
2 officials.

3 ~~5.4.~~ "Employer" means the state of North Dakota.

4 ~~6.5.~~ "Participating member" means an eligible employee who elects to participate in the
5 defined contribution retirement plan established under this chapter.

6 ~~7.6.~~ "Permanent employee" means a state employee whose services are not limited in
7 duration and who is filling an approved and regularly funded position and is employed
8 twenty hours or more per week and at least five months each year.

9 ~~8.7.~~ "Wages" and "salaries" means earnings in eligible employment under this chapter
10 reported as salary on a federal income tax withholding statement plus any salary
11 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or
12 457. "Salary" does not include fringe benefits such as payments for unused sick leave,
13 personal leave, vacation leave paid in a lump sum, overtime, housing allowances,
14 transportation expenses, early retirement, incentive pay, severance pay, medical
15 insurance, workforce safety and insurance benefits, disability insurance premiums or
16 benefits, or salary received by a member in lieu of previously employer-provided fringe
17 benefits under an agreement between an employee and a participating employer.
18 Bonuses may be considered as salary under this section if reported and annualized
19 pursuant to rules adopted by the board.

20 **SECTION 6. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **54-52.6-02. Election.**

23 1. ~~The board shall provide an opportunity for each eligible employee who is a member of~~
24 ~~the public employees retirement system on September 30, 2001, and who has not~~
25 ~~made a written election under this section to transfer to the defined contribution~~
26 ~~retirement plan before October 1, 2001, to elect in writing to terminate membership in~~
27 ~~the public employees retirement system and elect to become a participating member~~
28 ~~under this chapter. Except as provided in section 54-52.6-03, an election made by an~~
29 ~~eligible employee under this section is irrevocable. The board shall accept written~~
30 ~~elections under this section from eligible employees during the period beginning on~~
31 ~~July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who~~

1 does not make a written election or who does not file the election during the period
2 specified in this section continues to be a member of the public employees retirement
3 system. An eligible employee who makes and files a written election under this section
4 ceases to be a member of the public employees retirement system ~~effective twelve-~~
5 ~~midnight December 31, 2001;~~ becomes a participating member in the defined
6 contribution retirement plan under this chapter ~~effective 12:01 a.m. January 1, 2002;~~
7 and waives all of that ~~person's~~employee's rights to a pension, annuity, retirement
8 allowance, insurance benefit, or any other benefit under the public employees
9 retirement system ~~effective December 31, 2001~~. This section does not affect a
10 ~~person's~~an employee's right to health benefits or retiree health benefits under chapter
11 54-52.1. An eligible employee who is first employed and entered upon the payroll of
12 that ~~person's~~employee's employer after ~~September 30, 2001~~December 31, 2023, may
13 make an election to participate in the defined contribution retirement plan established
14 under this chapter at any time during the first six months after the date of employment.
15 If the board, in its sole discretion, determines that the employee was not adequately
16 notified of the employee's option to participate in the defined contribution retirement
17 plan, the board may provide the employee a reasonable time within which to make
18 that election, which may extend beyond the original six-month decision window.

- 19 2. ~~If an individual who is a deferred member of the public employees retirement system~~
20 ~~on September 30, 2001, is re-employed and by virtue of that employment is again~~
21 ~~eligible for membership in the public employees retirement system under chapter~~
22 ~~54-52, the individual may elect in writing to remain a member of the public employees~~
23 ~~retirement system or if eligible to participate in the defined contribution retirement plan~~
24 ~~established under this chapter to terminate membership in the public employees~~
25 ~~retirement system and become a participating member in the defined contribution~~
26 ~~retirement plan established under this chapter. An election made by a deferred~~
27 ~~member under this section is irrevocable. The board shall accept written elections~~
28 ~~under this section from a deferred member during the period beginning on the date of~~
29 ~~the individual's re-employment and ending upon the expiration of six months after the~~
30 ~~date of that re-employment. If the board, in its sole discretion, determines that the~~
31 ~~employee was not adequately notified of the employee's option to participate in the~~

1 ~~defined contribution retirement plan, the board may provide the employee a~~
2 ~~reasonable time within which to make that election, which may extend beyond the~~
3 ~~original six-month decision window. A deferred member who makes and files a written~~
4 ~~election to remain a member of the public employees retirement system retains all~~
5 ~~rights and is subject to all conditions as a member of that retirement system. A~~
6 ~~deferred member who does not make a written election or who does not file the~~
7 ~~election during the period specified in this section continues to be a member of the~~
8 ~~public employees retirement system. A deferred member who makes and files a~~
9 ~~written election to terminate membership in the public employees retirement system~~
10 ~~ceases to be a member of the public employees retirement system effective on the~~
11 ~~last day of the payroll period that includes the date of the election; becomes a~~
12 ~~participating member in the defined contribution retirement plan under this chapter~~
13 ~~effective the first day of the payroll immediately following the date of the election; and~~
14 ~~waives all of that person's rights to a pension, an annuity, a retirement allowance,~~
15 ~~insurance benefit, or any other benefit under the public employees retirement system~~
16 ~~effective the last day of the payroll that includes the date of the election. This section~~
17 ~~does not affect any right to health benefits or retiree health benefits to which the~~
18 ~~deferred member may otherwise be entitled.~~

19 3. An eligible employee who elects to participate in the retirement plan established under
20 this chapter must remain a participant even if that employee returns to the classified
21 service or becomes employed by a political subdivision that participates in the public
22 employees retirement system. The contribution amount must be as provided in this
23 chapter, regardless of the position in which the employee is employed.

24 3. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to
25 participate in the retirement plan established under this chapter becomes a supreme
26 or district court judge, becomes a member of the highway patrol, becomes employed
27 in a position subject to teachers' fund for retirement membership, or becomes an
28 employee of the board of higher education or state institution under the jurisdiction of
29 the board who is eligible to participate in an alternative retirement program established
30 under subsection 6 of section 15-10-17, the member's status as a member of the
31 defined contribution retirement plan is suspended, and the member becomes a new

1 member of the retirement plan for which that member's new position is eligible. The
2 member's account balance remains in the defined contribution retirement plan, but no
3 new contributions may be made to that account. The member's service credit and
4 salary history that were forfeited as a result of the member's transfer to the defined
5 contribution retirement plan remain forfeited, and service credit accumulation in the
6 new retirement plan begins from the first day of employment in the new position. If the
7 member later returns to employment that is eligible for the defined contribution plan,
8 the member's suspension must be terminated, the member again becomes a member
9 of the defined contribution retirement plan, and the member's account resumes
10 accepting contributions. At the member's option, and pursuant to rules adopted by the
11 board, the member may transfer any available balance as determined by the
12 provisions of the alternate retirement plan into the member's account under this
13 chapter.

14 4. After consultation with its actuary, the board shall determine the method by which a
15 participating member ~~or deferred member~~ may make a written election under this
16 section. If the participating member ~~or deferred member~~ is married at the time of the
17 election, the election is not effective unless the election is signed by the individual's
18 spouse. However, the board may waive this requirement if the spouse's signature
19 cannot be obtained because of extenuating circumstances.

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

25 6. A participating member who becomes a temporary employee may still participate in
26 the defined contribution retirement plan upon filing an election with the board within
27 one hundred eighty days of transferring to temporary employee status. The
28 participating member may not become a member of the defined benefit plan as a
29 temporary employee. The temporary employee electing to participate in the defined
30 contribution retirement plan shall pay monthly to the fund an amount equal to eight
31 and twelve hundredths percent times the temporary employee's present monthly

1 salary. The amount required to be paid by a temporary employee increases by two
2 percent times the temporary employee's present monthly salary beginning with the
3 monthly reporting period of January 2012, ~~and~~ with an additional increase of two
4 percent, beginning with the monthly reporting period of January 2013, ~~and~~ with an
5 additional increase of two percent, beginning with the monthly reporting period of
6 January 2014, and with an additional increase of one percent, beginning with the
7 monthly reporting period of January 2024. The temporary employee shall also pay the
8 required monthly contribution to the retiree health benefit fund established under
9 section 54-52.1-03.2. This contribution must be recorded as a member contribution
10 pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's
11 contributions. A temporary employee may continue to participate as a temporary
12 employee until termination of employment or reclassification of the temporary
13 employee as a permanent employee.

- 14 7. A former participating member who has accepted a retirement distribution pursuant to
15 section 54-52.6-13 and who subsequently becomes employed by an entity different
16 from the employer with which the member was employed at the time the member
17 retired but which does participate in any state-sponsored retirement plan may, before
18 re-enrolling in the defined contribution retirement plan, elect to permanently waive
19 future participation in the defined contribution retirement plan, whatever plan in which
20 the new employing entity participates, and the retiree health program and maintain
21 that member's retirement status. Neither the member nor the employer are required to
22 make any future retirement contributions on behalf of that employee.

23 **SECTION 7. AMENDMENT.** Subsection 1 of section 54-52.6-09 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 1. Each participating member shall contribute monthly four percent of the monthly salary
26 or wage paid to the participant, and this assessment must be deducted from the
27 participant's salary in equal monthly installments commencing with the first month of
28 participation in the defined contribution retirement plan established under this chapter.
29 Participating member contributions increase by one percent of the monthly salary or
30 wage paid to the participant beginning with the monthly reporting period of
31 January 2012; with an additional increase of one percent, beginning with the reporting

1 period of January 2013; and with an additional increase of one percent, beginning with
2 the monthly reporting period of January 2014; and with an additional increase of
3 one percent, beginning with the monthly reporting period of January 2024.

4 **SECTION 8. AMENDMENT.** Section 54-52.6-10 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **54-52.6-10. Vesting.**

7 1. A participating member is immediately one hundred percent vested in that member's
8 contributions made to that member's account under this chapter. A participating
9 member vests in the employer contributions made on that member's behalf to an
10 account under this chapter according to the following schedule:

11 ~~1.~~ a. Upon completion of two years of service, fifty percent.

12 ~~2.~~ b. Upon completion of three years of service, seventy-five percent.

13 ~~3.~~ c. Upon completion of four years of service, one hundred percent.

14 2. A participating member also becomes one hundred percent vested in the employer
15 contributions upon reaching age sixty-five. A participating member who was a member
16 ~~or deferred member~~ of the public employees retirement system under chapter 54-52
17 who makes an election to participate in the defined contribution retirement plan
18 pursuant to this chapter must be credited with the years of service accrued under the
19 public employees retirement system on the effective date of participation in the defined
20 contribution retirement plan for the purpose of meeting vesting requirements for
21 benefits under this section. Any forfeiture as a result of the failure of a participating
22 member to vest in the employer contribution must be deposited in the administrative
23 expenses account.

24 **SECTION 9. APPROPRIATION - TRANSFER - GENERAL FUND TO PUBLIC**

25 **EMPLOYEES RETIREMENT SYSTEM FUND - REDUCTION OF UNFUNDED LIABILITY.**

26 There is appropriated out of any moneys in the general fund in the state treasury, not otherwise
27 appropriated, the sum of \$250,000,000, or so much of the sum as may be necessary, to the
28 public employees retirement system, which the office of management and budget shall transfer
29 to the public employees retirement system main system plan on July 1, 2023, for the purpose of
30 reducing the unfunded liability of the public employees retirement system main system plan, for
31 the biennium beginning July 1, 2023, and ending June 30, 2025.

1 **SECTION 10. APPLICATION.** Section 4 of this Act applies to employer contributions
2 beginning January 2024, using a contribution rate based on the July 1, 2022, actuarial analysis,
3 with the current contribution formula applying until January 2024. The election provision of
4 section 6 of this Act applies to permanent state employees hired after December 31, 2023.

5 **SECTION 11. EFFECTIVE DATE.** Sections 1, 2, 3, 5, 6, 7, and 8 of this Act become
6 effective January 1, 2024.