

CHAPTER 499

SENATE BILL NO. 2068
 (Legislative Council)
 (Interim Committee on State and Federal Government)

PUBLIC EMPLOYEES RETIREMENT SYSTEM

AN ACT to create and enact sections 54-52-02.4, 54-52-10.1, 54-52-17.1, and 54-52-19.1 of the North Dakota Century Code, relating to the public employees retirement system; to amend and reenact sections 54-52-01, 54-52-02.1, 54-52-02.2, 54-52-02.3, subsection 6 of section 54-52-03, subsections 1 and 4 of section 54-52-04, and sections 54-52-05, 54-52-06, 54-52-06.1, 54-52-10, 54-52-17, and 54-52-21 of the North Dakota Century Code, relating to certain terms, participants, methods of joining, governance, fees, contributions, funds, rights, and benefits of the public employees retirement system; and to repeal sections 54-52-11, 54-52-18, 54-52-19, and 54-52-20 of the North Dakota Century Code, relating to vesting apportionment of benefits and prior service benefits in the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 54-52-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-01. DEFINITION OF TERMS.) As used in this chapter, unless the context otherwise requires:

1. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
2. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and shall include appointive and elective officials at their sole election, provided that judges of the supreme and district courts eligible under section 54-52-02.3 shall be eligible employees and shall participate in the public employees retirement system.
3. "Employee" means any person 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; certified employees of a school district means those employees eligible to participate in the teachers' fund for retirement who shall not be eligible employees under this chapter.

4. "Employer" means a governmental unit.
5. "Funding agent" or "agents" means the insurance company, trust bank, or other financial institution whom the retirement board selects to hold and invest the employers' and members' contributions and pay certain benefits.
6. "Governmental unit" means the state of North Dakota or a county or city thereof, a school district, including the Fargo school district, a district health unit, and the Garrison conservancy district.
7. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.
8. "Permanent employee" means a governmental unit employee who has been employed by an eligible governmental unit for five continuous months, and is employed for more than twenty hours per week and more than five months each year.
9. "Prior service" means service or employment prior to July 1, 1966.
10. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.
11. "Public employees retirement system" means the retirement plan and program established by this chapter.
12. "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.
13. "Retirement board" or "board" means the five persons designated by this chapter as the governing authority for the retirement system created.
14. "Service" means employment on or after July 1, 1966.
15. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.
16. "Wages" and "salaries" means the actual dollar compensation excluding overtime paid to or for an employee for his services.

SECTION 2. AMENDMENT.) Section 54-52-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-02.1. COUNTY, CITY, AND NONCERTIFIED SCHOOL DISTRICT EMPLOYEES AUTHORIZED TO JOIN PUBLIC EMPLOYEES RETIREMENT SYSTEM.) The boards of county commissioners of the several counties and the governing bodies of any city or school district are hereby authorized on behalf of their permanent employees, and permanent noncertified employees only in the case of school districts, to enter into agreements with the state retirement board for the purpose of extending the benefits of the public employees retirement system, as provided in this chapter, to such employees. Such an agreement may, in accordance with this chapter, contain provisions relating to benefits, contributions, effective date, modification, administration, and other appropriate provisions as the state retirement board and the board of county commissioners or governing body of a city or a school district shall agree upon, but such agreement shall provide that:

1. The county, city, or school district will contribute on behalf of each eligible employee an amount equal to that provided in section 54-52-06.
2. A portion of the moneys, paid by the counties, cities, or school districts may be used to pay administrative expenses of the retirement board.

Notwithstanding any other provision of this chapter, no political subdivision of this state not participating in the retirement system on June 30, 1977, shall thereafter become a participant in the system until an actuarial study is performed under the direction of the board to calculate the cost of that portion of benefits to be paid by the retirement system to the employees of such political subdivision based on any prior service or on any service after June 30, 1977, and before the date of initial participation in the retirement system, or both; and the political subdivision has adopted a method, approved by the board, to pay the costs determined in this subsection over a period not to exceed twenty-five years from June 30, 1977. No political subdivision may discontinue participation in the fund without first making such payment to the fund as may be necessary for the fund to pay the future benefits of the eligible employees of such political subdivision as determined on the basis of rules and regulations promulgated by the board. Within thirty days after the effective date of this Act, except as otherwise provided in this section, any political subdivision may withdraw the total sums in its employee and employer accounts with the fund, make appropriate refunds, and terminate its participation in the public employees retirement system.

SECTION 3. AMENDMENT.) Section 54-52-02.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-02.2. EMPLOYEE REFERENDUM - AUTHORIZATION AND SUPERVISION. On their own motion or upon petition by twenty percent of the permanent county or city employees or the permanent noncertified employees of any school district, the board of county commissioners or the governing body of the city or school district shall authorize and

supervise a referendum of the permanent employees employed by that county or city or of the noncertified permanent employees employed by that school district or the employees of any other political subdivision authorized to participate in the system on the question whether such employees elect to participate in the retirement system. If the majority of such employees vote in favor of participation in the retirement system, the board of county commissioners or the governing body of a city, school district, or other political subdivision, notwithstanding anything to the contrary in chapter 40-46, may in its discretion enter into the agreement provided for in section 54-52-02.1. Notwithstanding provisions to the contrary in chapters 18-05, 18-11, and 40-45, the police department of any city, the fire department of any city, or both, may hold referendums among their employees on the question of whether their department should join the remaining city employees in participation in the retirement system established by this chapter. If a majority of the city police or city firemen, or both, vote in favor of such participation the governing body of the city shall include such policemen and firemen within any agreement entered into pursuant to section 54-52-02.1, and shall arrange for discontinuance of any existing policemen's or firemen's pension fund as provided by law.

SECTION 4. AMENDMENT.) Section 54-52-02.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-02.3. NEWLY ELECTED SUPREME AND DISTRICT COURT JUDGES.) After July 1, 1973, any person elected or appointed to the office of judge of the supreme court, or judge of the district court for the first time shall, from and after the date he qualifies and takes office, be a participating member of the public employees retirement system. Any person so elected or appointed shall not be eligible for membership in or for receipt of benefits from the retirement program provided by chapter 27-17. As used in this section, the phrase "for the first time" means a person elected or appointed, who, after July 1, 1973, does not hold office as a judge of the supreme court or the district court at the time of his election or appointment.

SECTION 5.) Section 54-52-02.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-52-02.4. PARTICIPATION BY CERTAIN EMPLOYEES - REQUIREMENTS.) Each employee of a governmental unit who was not a participant in the retirement plan provided by this chapter during the time period from July 1, 1966, to June 30, 1977, may receive credit for service during such years; however, such person must pay to the fund the amount he or she would have paid during such years had he or she participated in the plan, together with the amount the governmental unit would have paid to the fund during that period of time, plus five percent annual interest compounded on the total amount. An employee may choose to pay such required amount to the fund in installments of ten percent per year plus five percent annual interest. If an employee retires before paying the entire amount, the employee's benefit shall be correspondingly reduced. An employee may become eligible for service credit under this section only if he or she enters into an agreement to do so with the board prior to October 1,

1977, or at the time the governmental unit from which such service was earned elects to participate in the retirement system as provided in section 54-52-02 if later.

SECTION 6. AMENDMENT.) Subsection 6 of section 54-52-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. The state auditor, the state health officer, and the commissioner of banking and financial institutions shall be ex officio, nonvoting, and advisory members of the board.

SECTION 7. AMENDMENT.) Subsections 1 and 4 of section 54-52-04 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The board shall have the power and duty to adopt such rules and regulations as may be necessary to implement the provisions of this chapter, and to manage the system subject to the limitations of this chapter. It shall have the powers and privileges of a corporation, including the right to sue and be sued in its own name as such board. The venue of all actions in which the board is a party shall be Burleigh County, North Dakota.
4. The board shall arrange for actuarial and medical advisers for the system. It shall cause a qualified, competent actuary to be retained on a consulting basis. The actuary shall make a biennial valuation of the liabilities and reserves of the system and a determination of the contributions required by the system to discharge its liabilities and pay the administrative costs under this Act, and to recommend to the board rates of employer and employee contributions required, based upon the entry age normal cost method, to maintain the system on an actuarial reserve basis; and as soon after the effective date as practicable and once every even-numbered year thereafter, make a general investigation of the actuarial experience under the system including mortality, retirement, employment turnover, and other items required by the board, and recommend actuarial tables for use in valuations and in calculating actuarial equivalent values based on such investigation; and perform such other duties as may be assigned by the board.

SECTION 8. AMENDMENT.) Section 54-52-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-05. MEMBERSHIP AND ASSESSMENTS.) Every eligible permanent state, county, city, or noncertified school district employee concurring in the plan shall so state in writing and all future eligible employees shall be participating members. An eligible employee shall be a permanent employee who has been employed by the state, county, city, or school district for five consecutive months has reached age eighteen, and is employed for more than twenty hours

per week for more than five months each year. Each member shall be assessed and required to pay monthly four percent of the monthly salary or wage paid to him, and such assessment shall be deducted and retained out of such salary in equal monthly installments.

SECTION 9. AMENDMENT.) Section 54-52-06 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-06. EMPLOYER'S CONTRIBUTION TO RETIREMENT PLAN.) Each governmental unit shall contribute an amount equal to five and twelve-hundredths percent of the monthly salary or wage of a participating member. Each governmental unit shall pay monthly such contribution into the retirement fund from its funds appropriated for payroll and salary or any other funds available for such purposes. Any governmental unit failing to pay such contributions monthly shall be subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after such payment became due. The board shall report to each session of the legislative assembly, or such committee as may be designated by the legislative council to hear such report in the interim between legislative sessions, the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 10. AMENDMENT.) Section 54-52-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-06.1. CONTRIBUTION BY SUPREME AND DISTRICT COURT JUDGES - EMPLOYER CONTRIBUTION.) Each judge of the supreme or district court who is a member of the public employees retirement system shall be assessed and required to pay monthly four percent of the monthly salary paid to him, and such assessment shall be deducted and retained out of his salary in equal monthly installments. The state shall contribute an amount equal to five and twelve-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution shall be paid from its funds appropriated for salary, or from any other funds available for such purposes.

SECTION 11. AMENDMENT.) Section 54-52-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-10. ALLOCATION OF FUNDS.) The board shall maintain such funds and accounts as may be necessary to administer the provisions of this chapter. Any and all expenses incurred by or for the operation of the retirement plan shall be paid from the funds contributed pursuant to sections 54-52-06 and 54-52-06.1.

SECTION 12.) Section 54-52-10.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-52-10.1. PAYMENT OF BENEFITS AND OTHER COSTS.) The board shall use funds under its control both before and after the effective

date of this Act to administer this chapter and pay benefits authorized by this chapter.

SECTION 13. AMENDMENT.) Section 54-52-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-17. FORMULATION OF PLAN.) Participating members shall receive benefits according to this section and according to the rules and regulations promulgated by the retirement board, not inconsistent with this chapter. No person shall receive a prior service benefit if such person was not continuously employed by a governmental unit in North Dakota from July 1, 1966, to June 30, 1977.

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date, as defined in this section. No participating member shall receive credit for more than thirty years of full-time employment unless such member has contributed to the plan or its predecessor established on July 1, 1966, in excess of thirty years; members who have contributed to these plans in excess of thirty years shall receive credit for the years of full-time employment after July 1, 1966. Part-time employment will be recognized as full-time employment on such a prorated basis as the board may prescribe.
2. Retirement benefits shall be calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any sixty consecutive months employed during the last one hundred twenty months of employment. Months not employed or months where employment was not full-time shall be excluded in arriving at the sixty months to be used for the purpose of computing an average. If the participating member has worked for less than sixty months at the normal retirement date, the final average salary shall be the average salary for the total months of employment.
3. Retirement dates shall be defined as follows:
 - a. Normal retirement date is the first day of the month next following the month in which the member attains the age of sixty-five years.
 - b. Postponed retirement date is the first day of the month next following the month in which the member actually severs his employment after attaining the age of sixty-five years.
 - c. Early retirement date is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed ten years of eligible employment.

- d. Disability retirement date is the first day of the sixth month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules and regulations of the retirement board, and has completed at least ten years of eligible employment. No member shall be eligible for benefits resulting from a disability unless he shall also be determined eligible for benefits under the Social Security Act as amended.
4. Retirement benefits shall be calculated by the retirement board as follows:
- a. Normal retirement benefits for all retirees reaching normal retirement date shall be an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which shall be determined as follows:
- (1) Service benefit equals one and four-hundredths percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals one and four-hundredths percent of final average salary multiplied by the number of years of prior service employment.
- b. Postponed retirement benefits shall be calculated as for normal retirement benefits, except years of employment only to the normal retirement date and salary to the actual retirement date shall be used.
- c. Early retirement benefits shall be calculated as for normal retirement benefits accrued to the date of termination of employment, but shall be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree shall be eligible for early retirement benefits only after having completed ten years of eligible employment.
- d. Disability retirement benefits shall be calculated as for normal retirement benefits accrued to the date of termination of employment due to permanent and total disability.
5. Upon termination of employment after completing ten years of eligible employment but prior to normal retirement date, a member who does not elect to receive early retirement benefits shall be eligible to receive deferred vested retirement benefits payable commencing on his normal retirement date equal to one hundred percent of his accrued normal retirement benefits.

6. If a member dies after completing ten years of eligible employment, but prior to retiring, the surviving spouse of the member shall receive monthly retirement benefits equal to fifty percent of the deceased member's accrued normal retirement benefits until the spouse dies or remarries, whichever first occurs. If the spouse dies or remarries, he shall come under the provisions of subsection 8 of this section.
7. If a member not coming under the provisions of subsection 6 of this section terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, he or his designated beneficiary shall be entitled to the balances of his employee account fund and the vested portion of his vesting fund, both as of June 30, 1977, with five percent annual interest thereon to date of termination. In addition, the member or his designated beneficiary shall be entitled to his contribution made after June 30, 1977, with five percent annual interest thereon to the date of termination. If the termination results from death or permanent and total disability, the member shall be deemed one hundred percent vested in the vesting fund on June 30, 1977.
8. If a member who is receiving retirement benefits or his surviving spouse who is receiving retirement benefits dies or if the surviving spouse remarries before the total amount of benefits paid to either or both equals the amount of the member's contribution with five percent interest, plus the vested amount on June 30, 1977, with five percent interest, the difference shall be paid to such spouse, his surviving beneficiary, if any, or his estate.
9. The retirement board shall promulgate regulations providing for the receipt of retirement benefits in the following optional forms:
- a. Joint and survivor, with fifty percent or one hundred percent options.
 - b. Level social security option, which shall be available only to early retirees.
 - c. Life with five- or ten-year certain options.
- Unless a member requests that he receive benefits according to one of these options at the time of applying for retirement, all retirement benefits shall be in the form of a lifetime monthly pension.
10. Employees who were continuously employed by a governmental unit in North Dakota during the entire period from July 1, 1966, to June 30, 1977, shall have the opportunity within one month after the effective date of this Act to

choose whether or not they wish to continue as members of the North Dakota public employees retirement system. Such an employee who chooses to withdraw from the fund shall receive his employee account fund and the vested portion of his vesting fund, both as of June 30, 1977.

SECTION 14.) Section 54-52-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-52-17.1. ACTUARIAL STUDIES REQUIRED.) Before making changes in benefit levels the legislative assembly and the board shall have an actuarial study conducted to determine the total cost of such changes.

SECTION 15.) Section 54-52-19.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-52-19.1. CONTINUANCE OF PRIOR SERVICE BENEFITS.) Any retired employee receiving prior service benefits pursuant to former section 54-52-19 shall continue to do so. For the purposes of this section only, section 54-52-19 shall be deemed to remain in effect.

SECTION 16. AMENDMENT.) Section 54-52-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-21. PLAN NOT EMPLOYMENT CONTRACT.) The adoption of or participation in a retirement plan shall not be deemed to give an employee the right to be retained in the employ of a governmental unit or to interfere with the right of the governmental unit to discharge any employee at any time.

SECTION 17. REPEAL.) Sections 54-52-18, 54-52-19, and 54-52-20 of the North Dakota Century Code, and section 54-52-11 of the 1975 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 26, 1977

CHAPTER 500

HOUSE BILL NO. 1184
(Committee on State and Federal Government)
(At the request of the Public Employees' Retirement System)

RETIREMENT SYSTEM'S FUNDING AGENT POWERS

AN ACT to amend section 54-52-25 of the North Dakota Century Code, relating to the limitation of powers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 54-52-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-25. LIMITATION OF POWERS.) The funding agent or agents selected by the board shall not delegate any powers or duties to any person, partnership, or corporation.

Approved March 31, 1977