

Introduced by

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 54-52.7 of the North Dakota Century Code,  
2 relating to adoption of the Uniform Management of Public Employee Retirement Systems Act;  
3 and to amend and reenact subsection 2 of section 15-39.1-05.2, sections 15-39.1-26, 21-10-07,  
4 and 54-52-14.1 of the North Dakota Century Code, relating to the authority of the board of  
5 trustees of the teachers' fund for retirement, investment of the teachers' fund for retirement and  
6 public employees retirement system funds, and legal investments of the state investment board.

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

8 **SECTION 1. AMENDMENT.** Subsection 2 of section 15-39.1-05.2 of the 1997  
9 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 10 2. Shall establish investment policy for the trust fund under section 21-10-02.1 and  
11 chapter 54-52.7. The investment policy must include:  
12 a. Acceptable rates of return, liquidity, and levels of risk; and  
13 b. Long-range asset allocation targets.

14 **SECTION 2. AMENDMENT.** Section 15-39.1-26 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **15-39.1-26. Investment of moneys in fund.** Investment of the fund ~~shall be~~ is under  
17 the supervision of the state investment board in accordance with ~~chapter~~ chapters 21-10 and  
18 54-52.7. ~~Such~~ The moneys must be placed for investment only with a firm or firms whose  
19 endeavor is money management, and only after a trust agreement or contract has been  
20 executed. Investment costs may be paid directly from the fund, and are hereby appropriated for  
21 that purpose, in accordance with section 21-10-06.2.

22 **SECTION 3. AMENDMENT.** Section 21-10-07 of the 1997 Supplement to the North  
23 Dakota Century Code is amended and reenacted as follows:

1           **21-10-07. Legal investments.** The Except for retirement funds belonging to the  
2 teachers' fund for retirement and the public employees retirement system, the state investment  
3 board shall apply the prudent investor rule in investing for funds under its supervision. The  
4 "prudent investor rule" means that in making investments the fiduciaries shall exercise the  
5 judgment and care, under the circumstances then prevailing, that an institutional investor of  
6 ordinary prudence, discretion, and intelligence exercises in the management of large  
7 investments entrusted to it, not in regard to speculation but in regard to the permanent  
8 disposition of funds, considering probable safety of capital as well as probable income. The  
9 retirement funds belonging to the teachers' fund for retirement and the public employees  
10 retirement system must be invested in accordance with chapter 54-52.7 and exclusively for the  
11 benefit of their members and in accordance with the respective funds' investment goals and  
12 objectives.

13           **SECTION 4. AMENDMENT.** Section 54-52-14.1 of the 1997 Supplement to the North  
14 Dakota Century Code is amended and reenacted as follows:

15           **54-52-14.1. Investment of moneys in fund.** Investment of the fund is under the  
16 supervision of the state investment board in accordance with ~~chapter~~ chapters 21-10 and  
17 54-52.7. ~~Such~~ The moneys must be placed for investment only with a firm or firms whose  
18 endeavor is money management, and only after a trust agreement or contract has been  
19 executed. Investment costs may be paid directly from the fund, and are hereby appropriated for  
20 that purpose, in accordance with section 21-10-06.2.

21           **SECTION 5.** Chapter 54-52.7 of the North Dakota Century Code is created and  
22 enacted as follows:

23           **54-52.7-01. Definition of terms.** As used in this chapter, unless the context otherwise  
24 requires:

- 25           1. "Administrator" means a person primarily responsible for the management of a  
26 retirement system or, if no person is clearly designated, the trustee of the system  
27 who has the ultimate authority to manage the system.
- 28           2. "Agent group of programs" means a group of retirement programs that shares  
29 administrative and investment functions but maintains a separate account for each  
30 retirement program so that assets accumulated for a particular program may be  
31 used to pay benefits only for that program's participants and beneficiaries.

- 1           3. "Appropriate grouping of programs" means:
  - 2           a. For defined benefit plans, a cost-sharing program or an agent group of  
3           programs; and
  - 4           b. For defined contribution plans, a group of retirement programs that shares  
5           administrative and investment functions.
- 6           4. "Beneficiary" means a person, other than the participant, who is designated by a  
7           participant or by a retirement program to receive a benefit under the program.
- 8           5. "Code" means the federal Internal Revenue Code of 1986, as amended.
- 9           6. "Cost-sharing program" means a retirement program for the employees of more  
10           than one public employer in which all assets accumulated for the payment of  
11           benefits may be used to pay benefits to any participants or beneficiaries of the  
12           program.
- 13           7. "Defined benefit plan" means a retirement program other than a defined  
14           contribution plan.
- 15           8. "Defined contribution plan" means a retirement program that provides for an  
16           individual account for each participant and for benefits based solely upon the  
17           amount contributed to the participant's account; any income, expenses, gains, and  
18           losses credited or charged to the account; and any forfeitures of accounts of other  
19           participants that may be allocated to the participant's account.
- 20           9. "Employee" includes an officer of a public employer.
- 21           10. "Fair value" means the amount that a willing buyer would pay a willing seller for an  
22           asset in a current sale, as determined in good faith by a fiduciary.
- 23           11. "Fiduciary" means a person who:
  - 24           a. Exercises any discretionary authority to manage a retirement system;
  - 25           b. Exercises any authority to invest or manage assets of a system;
  - 26           c. Provides investment advice for a fee or other direct or indirect compensation  
27           with respect to assets of a system or has any authority or responsibility to do  
28           so; or
  - 29           d. Is a trustee or a member of a board of trustees.
- 30           12. "Furnish" means:

- 1           a. To deliver personally, to mail to the last known place of employment or home  
2           address of the intended recipient, or, if reasonable grounds exist to believe  
3           that the intended recipient would receive it in ordinary course, to transmit by  
4           any other usual means of communication; or
- 5           b. To provide to the intended recipient's public employer if reasonable grounds  
6           exist to believe that the employer will make a good-faith effort to deliver  
7           personally, by mail, or by other usual means of communication.
- 8       13. "Governing law" means state and local laws establishing or authorizing the creation  
9       of a retirement program or system and the principal state and local laws and  
10       regulations governing the management of a retirement program or system or  
11       assets of either.
- 12       14. "Guaranteed benefit policy" means an insurance policy or contract to the extent the  
13       policy or contract provides for benefits in a guaranteed amount. The term includes  
14       any surplus in a separate account but excludes any other portion of a separate  
15       account.
- 16       15. "Insurer" means a company, service, or organization qualified to engage in the  
17       business of insurance in this state.
- 18       16. "Nonforfeitable benefit" means an immediate or deferred benefit that arises from a  
19       participant's service, is unconditional, and is enforceable against the retirement  
20       system.
- 21       17. "Participant" means an individual who is or has been an employee enrolled in a  
22       retirement program and who is or may become eligible to receive, or is currently  
23       receiving, a benefit under the program, or whose beneficiaries are or may become  
24       eligible to receive a benefit. The term does not include an individual who is no  
25       longer an employee of a public employer and has not accrued any nonforfeitable  
26       benefits under the program.
- 27       18. "Public employer" means the state or any political subdivision, or any agency or  
28       instrumentality of the state or any political subdivision, whose employees are  
29       participants in a retirement program.

1        19. "Retirement program" means a program of rights and obligations which a public  
2        employer establishes or maintains and which, by its express terms or as a result of  
3        surrounding circumstances:

4        a. Provides retirement income to employees; or

5        b. Results in a deferral of income by employees for periods extending to the  
6        termination of covered employment or beyond.

7        20. "Retirement system" means an entity established or maintained by a public  
8        employer to manage one or more retirement programs or to invest or manage the  
9        assets of one or more retirement programs.

10       21. "State" means a state of the United States, the District of Columbia, Puerto Rico,  
11       the United States Virgin Islands, or any territory or insular possession subject to  
12       the jurisdiction of the United States.

13       22. "Trustee" means a person who has ultimate authority to manage a retirement  
14       system or to invest or manage its assets.

15       **54-52.7-02. Scope.** This chapter applies to all retirement programs and retirement  
16       systems, except:

17       1. A retirement program that is unfunded and is maintained by a public employer  
18       solely for the purpose of providing deferred compensation for a select group of  
19       management employees or employees who rank in the top five percent of  
20       employees of that employer based on compensation;

21       2. A severance pay arrangement under which:

22       a. Payments are made solely on account of the termination of an employee's  
23       service and are not contingent upon the employee's retiring;

24       b. The total amount of the payments does not exceed the equivalent of twice the  
25       employee's total earnings from the public employer during the year  
26       immediately preceding the termination of service; and

27       c. All payments are completed within twenty-four months after the termination of  
28       service;

29       3. An arrangement or payment made on behalf of an employee because the  
30       employee is covered by title II of the federal Social Security Act;

- 1           4.   A qualified governmental excess benefit arrangement within the meaning of  
2               section 415(m) of the Code;
- 3           5.   An individual retirement account or individual retirement annuity within the meaning  
4               of section 408 of the Code;
- 5           6.   A retirement program consisting solely of annuity contracts or custodial accounts  
6               satisfying the requirements of section 403(b) of the Code; or
- 7           7.   A program maintained solely for the purpose of complying with workers'  
8               compensation laws or disability insurance laws.

9           **54-52.7-03. Establishment of trust.**

- 10          1.   Except as otherwise provided in subsection 2, all assets of a retirement system are  
11               held in trust. The trustee has the exclusive authority, subject to this chapter, to  
12               invest and manage those assets.
- 13          2.   Assets of a retirement system that consist of insurance contracts or policies issued  
14               by an insurer, assets of an insurer, and assets of the system held by an insurer  
15               need not be held in trust.
- 16          3.   If an insurer issues a guaranteed benefit policy to a retirement system, assets of  
17               the system include the policy but not assets of the insurer.
- 18          4.   If a retirement system invests in a security issued by an investment company  
19               registered under the Investment Company Act of 1940 [Pub. L. 76-768; 54 Stat.  
20               789; 15 U.S.C. 80a-1 et seq.], the assets of the system include the security but not  
21               assets of the investment company.

22          **54-52.7-04. Powers of trustee.**

- 23          1.   In addition to other powers conferred by the governing law, a trustee has exclusive  
24               authority, consistent with the trustee's duties under this chapter, to:
  - 25              a.   Establish an administrative budget sufficient to perform the trustee's duties  
26                   and, as appropriate and reasonable, draw upon assets of the retirement  
27                   system to fund the budget;
  - 28              b.   Obtain by contract the services necessary to exercise the trustee's powers  
29                   and perform the trustee's duties, including actuarial, auditing, custodial,  
30                   investment, and legal services; and

1           c. Procure and dispose of goods and property necessary to exercise the  
2           trustee's powers and perform the trustee's duties.

3           2. In exercising its authority under this section, a trustee is subject to the fiduciary  
4           duties of this chapter but not to personnel procurement or similar general laws  
5           relating to the subjects of subsection 1.

6           **54-52.7-05. Delegation of functions.**

7           1. A trustee or administrator may delegate functions that a prudent trustee or  
8           administrator acting in a like capacity and familiar with those matters could properly  
9           delegate under the circumstances.

10          2. The trustee or administrator shall exercise reasonable care, skill, and caution in:

11           a. Selecting an agent;

12           b. Establishing the scope and terms of the delegation, consistent with the  
13           purposes and terms of the retirement program; and

14           c. Periodically reviewing the agent's performance and compliance with the terms  
15           of the delegation.

16          3. In performing a delegated function, an agent owes a duty to the retirement system  
17           and to its participants and beneficiaries to comply with the terms of the delegation  
18           and, if a fiduciary, to comply with the duties imposed by section 54-52.7-06.

19          4. A trustee or administrator who complies with subsections 1 and 2 is not liable to  
20           the retirement system or to its participants or beneficiaries for the decisions or  
21           actions of the agent to whom the function was delegated.

22          5. By accepting the delegation of a function from the trustee or administrator, an  
23           agent submits to the jurisdiction of the courts of this state.

24          6. A trustee may limit the authority of an administrator to delegate functions under this  
25           section.

26           **54-52.7-06. General fiduciary duties.** A trustee or other fiduciary shall discharge  
27 duties with respect to a retirement system:

28           1. Solely in the interest of the participants and beneficiaries;

29           2. For the exclusive purpose of providing benefits to participants and beneficiaries  
30           and paying reasonable expenses of administering the system;

- 1           3. With the care, skill, and caution under the circumstances then prevailing which a
- 2           prudent person acting in a like capacity and familiar with those matters would use
- 3           in the conduct of an activity of like character and purpose;
- 4           4. Impartially taking into account any differing interests of participants and
- 5           beneficiaries;
- 6           5. Incurring only costs that are appropriate and reasonable; and
- 7           6. In accordance with a good-faith interpretation of the law governing the retirement
- 8           program and system.

9           **54-52.7-07. Duties of trustee in investing and managing assets of retirement**  
10 **system.**

- 11          1. In investing and managing assets of a retirement system pursuant to section
- 12          54-52.7-06, a trustee with authority to invest and manage assets:
- 13          a. Shall consider among other circumstances:
- 14              (1) General economic conditions;
- 15              (2) The possible effect of inflation or deflation;
- 16              (3) The role that each investment or course of action plays within the
- 17              overall portfolio of the retirement program or appropriate grouping of
- 18              programs;
- 19              (4) The expected total return from income and the appreciation of capital;
- 20              (5) Needs for liquidity, regularity of income, and preservation or
- 21              appreciation of capital; and
- 22              (6) For defined benefit plans, the adequacy of funding for the plan based
- 23              on reasonable actuarial factors;
- 24          b. Shall diversify the investments of each retirement program or appropriate
- 25              grouping of programs unless the trustee reasonably determines that, because
- 26              of special circumstances, it is clearly prudent not to do so;
- 27          c. Shall make a reasonable effort to verify facts relevant to the investment and
- 28              management of assets of a retirement system;
- 29          d. May invest in any kind of property or type of investment consistent with this
- 30              chapter; and



e. May consider benefits created by an investment in addition to investment return only if the trustee determines that the investment providing these collateral benefits would be prudent even without the collateral benefits.

2. A trustee with authority to invest and manage assets of a retirement system shall adopt a statement of investment objectives and policies for each retirement program or appropriate grouping of programs. The statement must include the desired rate of return on assets overall, the desired rates of return and acceptable levels of risk for each asset class, asset allocation goals, guidelines for the delegation of authority, and information on the types of reports to be used to evaluate investment performance. At least annually, the trustee shall review the statement and change or reaffirm it.

**54-52.7-08. Special application of duties.**

1. A trustee may return a contribution, with interest, to a public employer or employee, or make alternative arrangements for reimbursement, if the trustee determines the contribution was made because of a mistake of fact or law.

2. Upon termination of a retirement program, a trustee may return to a public employer any assets of the program remaining after all liabilities of the program to participants and beneficiaries have been satisfied.

3. If a retirement program provides for individual accounts and permits a participant or beneficiary to exercise control over the assets in such an account and a participant or beneficiary exercises control over those assets:

a. The participant or beneficiary is not a fiduciary by reason of the exercise of control; and

b. A person who is otherwise a fiduciary is not liable for any loss, or by reason of any breach of fiduciary duty, resulting from the participant's or beneficiary's exercise of control.

4. If an insurer issues to a retirement system a contract or policy that is supported by the insurer's general account but is not a guaranteed benefit policy, the insurer complies with section 54-52.7-06 if it manages the assets of the general account with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use

1 in the conduct of an activity of like character and purpose, taking into account all  
2 obligations supported by the general account.

3 **54-52.7-09. Reviewing compliance.** In evaluating performance of a trustee or other  
4 fiduciary:

- 5 1. Compliance by the trustee or other fiduciary with sections 54-52.7-05 through  
6 54-52.7-07 must be determined in light of the facts and circumstances existing at  
7 the time of the trustee or fiduciary's decision or action and not by hindsight.
- 8 2. The trustee's investment and management decisions must be evaluated not in  
9 isolation but in the context of the trust portfolio as a whole and as a part of an  
10 overall investment strategy having risk and return objectives reasonably suited to  
11 the program or appropriate grouping of programs.

12 **54-52.7-10. Fiduciary liability.**

- 13 1. A trustee or other fiduciary who breaches a duty imposed by this chapter is  
14 personally liable to a retirement system for any losses resulting from the breach  
15 and any profits made by the trustee or other fiduciary through use of assets of the  
16 system by the trustee or other fiduciary. The trustee or other fiduciary is subject to  
17 other equitable remedies as the court considers appropriate, including removal.
- 18 2. An agreement that purports to limit the liability of a trustee or other fiduciary for a  
19 breach of duty under this chapter is void.
- 20 3. A retirement system may insure itself against liability or losses occurring because  
21 of a breach of duty under this chapter by a trustee or other fiduciary.
- 22 4. A trustee or other fiduciary may insure against liability or losses occurring because  
23 of a breach of duty under this chapter if the insurance is purchased or provided  
24 either by the trustee or fiduciary personally or, on the trustee or fiduciary's behalf,  
25 by this state, the retirement system, a public employer whose employees  
26 participate in a retirement program served by the trustee or fiduciary, an employee  
27 representative whose members participate in a retirement program served by the  
28 trustee or fiduciary, or the trustee or fiduciary's employer.

29 **54-52.7-11. Open meetings and records.**

- 30 1. A multimember body having authority to invest or manage assets of a retirement  
31 system may deliberate about, or make tentative or final decisions on, investments

or other financial matters in executive session if disclosure of the deliberations or decisions jeopardizes the ability to implement a decision or to achieve investment objectives.

2. A record of a retirement system that discloses deliberations about, or a tentative or final decision on, investments or other financial matters is not an open record under section 44-04-18 to the extent and so long as its disclosure jeopardizes the ability to implement an investment decision or program or to achieve investment objectives.

**54-52.7-12. Disclosure to public.**

1. An administrator shall prepare and disseminate:
- a. A summary plan description of each retirement program;
  - b. A summary description of any material modification in the terms of the program and any material change in the information required to be contained in the summary plan description, to the extent the modification or change has not been integrated into an updated summary plan description;
  - c. An annual disclosure of financial and actuarial status; and
  - d. An annual report.
2. An administrator shall make available for public examination in the principal office of the administrator and in other places if necessary to make the information reasonably available to participants:
- a. The governing law of the retirement program and system;
  - b. The most recent summary plan description;
  - c. Summary descriptions of modifications or changes described in subdivision b of subsection 1 that have been provided to participants and beneficiaries but have not yet been integrated into the summary plan description;
  - d. The most recent annual disclosure of financial and actuarial status; and
  - e. The most recent annual report.
3. Upon written request by a participant, beneficiary, or member of the public, an administrator must provide a copy of any publication described in subsection 2. Except as otherwise provided in subsection 1 of section 54-52.7-13, the administrator may charge a reasonable fee to cover the cost of providing copies.

1           The administrator shall provide the copies within thirty days after the request or, if a  
2           fee is charged, within thirty days after receiving payment.

3           **54-52.7-13. Disclosure to participants and beneficiaries.**

4           1. An administrator shall furnish to each participant and to each beneficiary who is  
5           receiving benefits under a retirement program:

6           a. A copy of the most recent summary plan description, along with any summary  
7           descriptions of modifications or changes described in subdivision b of  
8           subsection 1 of section 54-52.7-12, within three months after a person  
9           becomes a participant or, in the case of a beneficiary, within three months  
10           after a person first receives benefits, or, if later, within four months after the  
11           retirement program becomes subject to this chapter;

12           b. The summary description of any modifications or changes described in  
13           subdivision b of subsection 1 of section 54-52.7-12 within seven months after  
14           the end of the fiscal year in which a modification or change has been made;

15           c. A copy of an updated summary plan description that integrates all  
16           modifications and changes at intervals not exceeding five years; and

17           d. The annual report within seven months after the end of each fiscal year.

18           2. An administrator shall provide to a participant or beneficiary a statement containing  
19           information that would permit the participant or beneficiary to estimate projected  
20           benefits reasonably, to the extent the information is regularly maintained by the  
21           retirement system. The information must be provided with the annual report or  
22           upon written request of the participant or beneficiary. The information need not be  
23           provided to a participant or beneficiary who is currently receiving benefits.

24           3. A participant who is not currently receiving benefits is entitled without charge to  
25           one statement under subsection 2 during any fiscal year. An administrator may  
26           charge a reasonable fee to cover the cost of providing other statements. The  
27           administrator shall provide the statements within thirty days after the participant or  
28           beneficiary's request or, if a fee is charged, within thirty days after receiving  
29           payment.

30           **54-52.7-14. Reports to legislative council.** An administrator shall file with the  
31           legislative council a copy of:

- 1       1. The governing law of the retirement program and system within four months after  
2       the system becomes subject to this chapter and an updated copy at least once  
3       every year thereafter;
- 4       2. The summary plan description within four months after the system becomes  
5       subject to this chapter and of updated summary plan descriptions at the same time  
6       they are first furnished to any participant or beneficiary under subdivision c of  
7       subsection 1 of section 54-52.7-13;
- 8       3. Any summary description of modifications or changes within seven months after  
9       the end of the fiscal year in which a modification or change has been made; and
- 10      4. The annual disclosure of financial and actuarial status and annual report within  
11      seven months after the end of each fiscal year.

12      **54-52.7-15. Summary plan description.**

- 13      1. A summary plan description and a summary description of modifications or  
14      changes under subdivision b of subsection 1 of section 54-52.7-12 must be written  
15      in a manner calculated to be understood by the average participant and be  
16      accurate and sufficiently comprehensive reasonably to inform the participants and  
17      beneficiaries of their rights and obligations under the retirement program.
- 18      2. A summary plan description must contain:
  - 19      a. The name of the retirement program and system and type of administration;
  - 20      b. The name and business address of the administrator;
  - 21      c. The name and business address of each agent for service of process;
  - 22      d. Citations to the governing law of the retirement program and system;
  - 23      e. A description of the program's requirements respecting eligibility for  
24      participation and benefits;
  - 25      f. A description of the program's provisions providing for nonforfeitable benefits;
  - 26      g. A description of circumstances that may result in disqualification, ineligibility,  
27      or denial or loss of benefits;
  - 28      h. A description of the benefits provided by the program, including the manner of  
29      calculating benefits and any benefits provided for spouses and survivors;
  - 30      i. The source of financing of the program;
  - 31      j. The identity of any organization through which benefits are provided;

- 1           k. The date the fiscal year ends;  
2           l. The procedures to claim benefits under the program and the administrative  
3           procedures available under the program for the redress of claims that are  
4           denied in whole or in part; and  
5           m. Notice of the availability of additional information pursuant to subsections 2  
6           and 3 of section 54-52.7-12, subsections 2 and 3 of section 54-52.7-13, and  
7           section 54-52.7-14.

8           **54-52.7-16. Annual disclosure of financial and actuarial status.**

- 9           1. As used in this section, "qualified public accountant" means:  
10           a. An auditing agency of this state, or a political subdivision of this state, which  
11           has no direct relationship with the functions or activities of a retirement system  
12           or its fiduciaries other than:  
13               (1) Functions relating to this chapter; or  
14               (2) A relationship between the system and the agency's employees as  
15               participants or beneficiaries on the same basis as other participants and  
16               beneficiaries; or  
17           b. A person who is an independent public accountant, certified or licensed by a  
18           regulatory authority of a state.  
19           2. As used in this section, "related person" of an individual means:  
20           a. The individual's spouse or a parent or sibling of the spouse;  
21           b. The individual's descendant, sibling, or parent or the spouse of the individual's  
22           descendant, sibling, or parent;  
23           c. Another individual residing in the same household as the individual;  
24           d. A trust or estate in which an individual described in subdivision a, b, or c has a  
25           substantial interest;  
26           e. A trust or estate for which the individual has fiduciary responsibilities; or  
27           f. An incompetent, ward, or minor for whom the individual has fiduciary  
28           responsibilities.  
29           3. An annual disclosure of financial and actuarial status must contain:

- a. The name of the retirement system and identification of each retirement program and, if programs are in an appropriate grouping of programs, of each appropriate grouping of programs;
- b. The name and business address of the administrator;
- c. The name and business address of each trustee and each member of a board of trustees and a brief description of how the trustee or member was selected;
- d. The name and business address of each agent for service of process;
- e. The number of employees covered by each retirement program not in an appropriate grouping of programs, or by each appropriate grouping of programs, or both;
- f. The name and business address of each fiduciary;
- g. The current statement of investment objectives and policies required by subsection 2 of section 54-52.7-07;
- h. Financial statements and notes to the financial statements in conformity with generally accepted accounting principles;
- i. An opinion on the financial statements by a qualified public accountant in conformity with generally accepted auditing standards;
- j. In the case of a defined benefit plan, actuarial schedules and notes to the actuarial schedules in conformity with generally accepted actuarial principles and practices for measuring pension obligations;
- k. In the case of a defined benefit plan, an opinion by a qualified actuary that the actuarial schedules are complete and accurate to the best of the actuary's knowledge, that each assumption and method used in preparing the schedules is reasonable, that the assumptions and methods in the aggregate are reasonable, and that the assumptions and methods in combination offer the actuary's best estimate of anticipated experience;
- l. A description of any material interest, other than the interest in the retirement program itself, held by any public employer participating in the system or any employee organization representing employees covered by the system in any material transaction with the system within the last three years or proposed to be effected;

- 1           m. A description of any material interest held by any trustee, administrator, or  
2           employee who is a fiduciary with respect to the investment and management  
3           of assets of the system, and, if the fiduciary is an individual, by a related  
4           person of the fiduciary, in any material transaction with the system within the  
5           last three years or proposed to be effected;
- 6           n. A schedule of the rates of return, net of total investment expense, on assets of  
7           the system overall and on assets aggregated by category over the most  
8           recent one-year, three-year, five-year, and ten-year periods, to the extent  
9           available, and the rates of return on appropriate benchmarks for assets of the  
10           system overall and for each category over each period;
- 11           o. A schedule of the sum of total investment expense and total general  
12           administrative expense for the fiscal year expressed as a percentage of the  
13           fair value of assets of the system on the last day of the fiscal year and an  
14           equivalent percentage for the preceding five fiscal years; and
- 15           p. A schedule of all assets held for investment purposes on the last day of the  
16           fiscal year aggregated and identified by issuer, borrower, lessor, or similar  
17           party to the transaction stating, if relevant, the asset's maturity date, rate of  
18           interest, par or maturity value, number of shares, cost, and fair value and  
19           identifying any asset that is in default or classified as uncollectible.

20           **54-52.7-17. Annual report.** An annual report must contain:

- 21           1. The name and business address of each trustee and each member of a board of  
22           trustees;
- 23           2. The financial statements, but not the notes, required by subdivision h of  
24           subsection 3 of section 54-52.7-16;
- 25           3. For defined benefit plans, the actuarial schedules, but not the notes, required by  
26           subdivision j of subsection 3 of section 54-52.7-16;
- 27           4. The schedules described in subdivisions n and o of subsection 3 of section  
28           54-52.7-16;
- 29           5. A brief description of and information about how to interpret the statements and  
30           schedules;



6. Other material necessary to summarize fairly and accurately the annual disclosure of financial and actuarial status; and

7. Notice of the availability of additional information pursuant to subsections 2 and 3 of section 54-52.7-12, subsections 2 and 3 of section 54-52.7-13, and section 54-52.7-14.

**54-52.7-18. Enforcement.**

1. A public employer, participant, beneficiary, or fiduciary may maintain an action:

a. To enjoin an act, practice, or omission that violates this chapter;

b. For appropriate equitable relief for breach of trust under section 54-52.7-10; or

c. For other appropriate equitable relief to redress the violation of or to enforce this chapter.

2. The legislative council may maintain an action to enjoin a violation of section 54-52.7-14.

3. In an action under this section by a participant, beneficiary, or fiduciary, the court may award reasonable attorney fees and costs to either party.

**54-52.7-19. Alienation of benefits.** Benefits of a retirement program may not be assigned or alienated and are exempt from claims of creditors, except benefits are not exempt from enforcement of any order to pay spousal support or child support, or a qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6.

**54-52.7-20. Uniformity of application and construction.** In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject among states that enact it.

**54-52.7-21. Savings and transitional provisions.** Before January 1, 1999, this chapter does not apply to an eligible deferred compensation plan that was in existence on August 20, 1996, and satisfies the requirements of section 457 of the Code, unless all assets and income of the plan are held in trust for the exclusive benefit of participants and their beneficiaries.