

HB 559-FN - AS INTRODUCED

2023 SESSION

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10/08

HOUSE BILL

559-FN

AN ACT establishing a state retirement plan group for new state employee members of the retirement system.

SPONSORS: Rep. D. McGuire, Merr. 14; Rep. T. Lekas, Hills. 38; Rep. Lewicke, Hills. 36

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill establishes a group III, defined contribution retirement state retirement plan for new state employee members of the retirement system, who begin service on or after July 1, 2024. All new employees of state employers on and after July 1, 2024 will be required to join the group III defined contribution plan as administered by the retirement system, and any other group I employees may join.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT establishing a state retirement plan group for new state employee members of the retirement system.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Participation by Members; Retirement System; Defined Contribution Plan. Amend the
2 introductory paragraph of RSA 100-A:3, I(a) to read as follows:

3 I.(a) Any person who becomes ~~[an]~~ **a political subdivision** employee, teacher, permanent
4 policeman, or permanent fireman after the date of establishment, working in a position for an
5 employer under this chapter as determined by common law standards, shall become a member of the
6 **defined benefit** retirement system as a condition of employment. In addition, employees appointed
7 to an unclassified position with no fixed term on or after July 1, 2011 **and before July 1, 2024** shall
8 become members of the **defined benefit** retirement system as a condition of employment, if they are
9 receiving benefits from the retirement system. Any retirement benefit collected by such an
10 unclassified employee shall be suspended during the period of employment. Membership in the
11 retirement system shall be optional in the case of elected officials, officials appointed for fixed terms,
12 employees appointed to an unclassified position with no fixed term prior to July 1, 2011, or those
13 employees of the general court who are eligible for membership in the retirement system. Other
14 **state employees, beginning service on or after July 1, 2024 shall as a condition of**
15 **employment participate in the retirement system group III, defined contribution plan,**
16 **established under RSA 100-A:58 through RSA 100-A:69.** Elected officials and officials appointed
17 for fixed terms shall, however, be eligible for membership in the retirement system only under the
18 following conditions:

19 2 New Subdivision; Group III; Retirement System Defined Contribution Plan. Amend RSA 100-
20 A by inserting after section 57 the following new subdivision:

21 Group III Retirement System Defined Contribution Plan

22 100-A:58 Definitions. In this subdivision:

23 I. "Member" means a person employed by the state who is required to or elects to participate
24 in the plan established in this subdivision.

25 II. "Plan" means the retirement system group III defined contribution plan established for
26 members who began service on and after July 1, 2024, and who transfer funds to the defined
27 contribution plan pursuant to procedures adopted by the state treasurer with the advice of the
28 committee. The defined contribution retirement plan is a plan in which savings are accumulated in
29 an individual account for the exclusive benefit of the member or beneficiaries. The plan is
30 established effective July 1, 2024, at which time contributions by members begin.

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100-A:59 Group III; Defined Contribution Plan Established. There is hereby established a retirement benefit plan for members required to, or who voluntarily elect to, enroll in the retirement system, who began service on or after July 1, 2024. The defined contribution retirement plan is intended to qualify under 26 U.S.C. section 403(b) and section 414(d), the Internal Revenue Code, as a qualified retirement plan established and maintained by the state for its employees. All qualifying contributions shall be held and invested by the retirement system. All such contributions and all investments, reinvestments, interest, or other moneys held by the retirement system shall not be assets of the retirement system administered by the board of trustees or subject to control of the board of trustees of the retirement system. All assets received by the plan shall be held for the exclusive benefit of plan participants and their beneficiaries and applied solely as provided by the plan.

100-A:60 Membership. Any person who is first employed, or reemployed after leaving service, by an employer and entered on the payroll on a full-time or eligible part-time basis on or after July 1, 2024 shall be a member of the retirement system group III defined contribution plan established in this subdivision; except that membership shall be optional in the case of elected officials, officials appointed for fixed terms, unclassified state employees, or those employees of the general court who are eligible for membership in the retirement system. Any person who is an active member of group I of the state retirement system may elect to become a member under group III, the defined contribution plan, under procedures and subject to rules adopted by the board of trustees.

100-A:61 Administration; Rulemaking.

I. The administrator of the plan shall be the executive director, who shall have the assistance and services of the department of administrative services for all duties and responsibilities under this subdivision.

II. The executive director shall adopt rules, pursuant to RSA 541-A, relative to the procedure for administration of the investment options of members and beneficiaries, and forms necessary for the administration of this subdivision.

100-A:62 Administration of Plan. The board of trustees may contract with a third-party administrator for the retirement system defined contribution plan for the administration of assets accumulated under each participant's account.

100-A:63 Contributions by Member. The member participating under this subdivision shall contribute at a minimum 5 percent of earnable compensation.

100-A:64 Limitations on Contributions. Notwithstanding any other provisions of this plan, the annual additions to each member's individual account under this plan may not exceed, for any limitation year, the amount permitted under 26 U.S.C. section 415 at any time. If the amount of a member's defined contribution plan contributions exceeds the limitation of 26 U.S.C. section 415(c) for any limitation year, the administrator shall take any necessary remedial action to correct an excess contribution.

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1 100-A:65 Investment of Individual Accounts.

2 I. The administrator shall provide a range of investment options and permit a participant to
3 exercise investment control over the participant's assets in the member's individual account as
4 provided in this section. If a participant exercises control over the assets in the individual account,
5 the participant is not considered a fiduciary for any reason on the basis of exercising that control.

6 II. A participant may direct investment of plan funds held in an account among available
7 investment funds in accordance with rules established by the administrator.

8 III. A participant may elect to change or transfer all or a portion of the participant's existing
9 account balance among available investment funds not more often than once each month in
10 accordance with the rules established by the administrator. Only the last election received by the
11 administrator before the transmittal of contributions to the trust fund for allocation to the individual
12 account will be used to direct the investment of the contributions received.

13 IV. Except to the extent clearly set out in the terms of the investment plans offered by the
14 employer to the employee, the employer is not liable to the participant for investment losses if the
15 prudent investment standard has been met.

16 V. The employer, administrator, state, or board, or a person or entity who is otherwise a
17 fiduciary, is not liable for any participant's investment loss that results from the participant's
18 directing the investment of plan assets allocated to the participant's account.

19 100-A:66 Contributions by the State. Employers under the plan shall contribute to member
20 accounts a minimum of a 50 percent match of a member's contributions.

21 100-A:67 Vesting. Member contributions and investment return attributable to member
22 contributions shall be 100 percent vested as of the date of contribution or accrual. Employer
23 contributions, and investment return attributable to employer contributions held in an account of a
24 member by the administrator shall be fully vested under this subdivision after one year of
25 continuous participation by a member.

26 100-A:68 Withdrawal of Funds. Distributions from an account of a member shall be permitted
27 in the following circumstances, subject to applicable rules and limitations under federal regulations:

28 I. Termination of employment.

29 II. Retirement.

30 III. Upon turning age 59½ and still employed as limited by federal regulations.

31 IV. If the member becomes disabled.

32 V. If the member dies.

33 VI. Financial hardship as defined in applicable federal regulations.

34 100-A:69 Health Insurance Group Insurance Inclusion. Any retired member and his or her
35 beneficiaries may participate in the retiree group insurance programs authorized by RSA 21-I:26
36 through RSA 21-I:36 at his or her own expense unless otherwise provided.

37 3 Effective Date. This act shall take effect 60 days after its passage.

HB 559-FN- FISCAL NOTE
AS INTRODUCED

AN ACT establishing a state retirement plan group for new state employee members of the retirement system.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$3,200,560	\$23,542,202
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Various State Agency Funds			

**POLITICAL
SUBDIVISIONS:**

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$29,500,363

*The New Hampshire Retirement System states it is not able to separate the fiscal impact of this legislation between county and local government, therefore the fiscal impact is shown together as political subdivisions.

METHODOLOGY:

This bill establishes a new group III, defined contribution retirement state retirement plan for new state employee members of the retirement system, who begin service on or after July 1, 2024. All new employees of state employers on and after July 1, 2024 will be required to join the group III defined contribution plan as administered by the retirement system, and any other group I employees may join. Members of the new plan would contribute a minimum of 5% of compensation but could elect a higher percentage within IRS limits. This bill also requires the State to contribute a minimum 50% match of member contributions. Each member would have an individual account and the ability to direct how it is invested among the fund options offered.

The New Hampshire Retirement System (NHRS) actuary provided valuations based upon data used to estimate the costs between the impact of the proposed defined contribution plan and the impact of the current defined benefit plan. Per NHRS's request the actuary assumed only Group I state employees who are current members in the defined benefit plan as of July 1, 2024 would participated. The increase in the defined contribution plan beginning in FY 2025 has the assumptions that the employer contribution match will be 100% of the minimum defined

contribution member contribution rate of 5% of pay. The employer rate is applied to expect payroll for Group I state employees hired on or after July 1, 2024 with the impact beginning in FY 2025 when the participation in the defined contribution plan would commence. The costs will continue to increase accordingly as more new hires are eligible for the plan.

**State Impact
Defined Contribution Plan**

Expected Employer Dollar Increase (Decrease) Due to Proposal				
	FY 2023	FY 2024	FY 2025	FY 2026
Employees	-	-	\$3,200,560	\$5,964,740
Police	-	-	-	\$0
Fire	-	-	-	<u>\$0</u>
TOTAL	\$0	\$0	\$3,200,560	\$5,964,740

The NHRS actuary also provided the valuation for the Defined Benefit Plan with a current expectation of the annual rate of investment return on NHRS assets as 6.75%. Actual employer contribution rates for FY 2026 will be based on the June 30, 2023 actuarial valuation with the defined benefit plan reflecting the impact on employer contributions beginning in FY 2026 as shown. It should be noted the fiscal impact of this bill will go well beyond FY 2026.

STATE IMPACT

Defined Benefit Plan

Expected Employer Dollar Increase (Decrease) Due to Proposal				
	FY 2023	FY 2024	FY 2025	FY 2026
Employees	-	-	-	\$15,158,796
Police	-	-	-	\$2,322,488
Fire	-	-	-	<u>\$96,179</u>
TOTAL	\$0	\$0	\$0	\$17,577,463

POLITICAL SUBDIVISIONS IMPACT

Defined Benefit Plan

Expected Employer Dollar Increase (Decrease) Due to Proposal				
	FY 2023	FY 2024	FY 2025	FY 2026
Employees	-	-	-	\$5,814,006
Teachers	-	-	-	\$14,381,108
Police	-	-	-	\$5,962,728
Fire	-	-	-	<u>\$3,342,521</u>
TOTAL	\$0	\$0	\$0	\$29,500,363

The New Hampshire Retirement System (NHRS) states they have assumed the proposed defined contribution plan is a stand-alone plan and separately administered versus being a component of the current NHRS plan administered by the Board of Trustees and staff. The NHRS has not calculated or included costs relating to the establishment, management, and administration of the new plan. However, they do state the proposed changes in the bill will involve costs to the NHRS as they would still need to allow withdrawals of contributions for current plans to rollover to the new plan. The impact will be in the form of administrative costs relating to reprogramming of the pension administration system, revisions to administrative procedures member communications, website updates and staff training which will result in an indeterminable increase in expenditures. The NHRS also states they are currently in the process of upgrading the pension administration system and the proposed changes would require updates to the current and future systems and procedures increasing administrative costs and challenges.

The NHRS indicates there are several ambiguities in the provisions of this bill as well as conflicting and ambiguous language regarding the management and administration of the plan, as stated above, and the investment of plan assets. There is also some misleading language in terms of Group I and Group II classifications of members. Below are several examples of issues cited by the NHRS:

- referencing the new plan is intended to qualify under Section 403(b) of the Internal Revenue Code. This is not permitted as governmental employers can only sponsor a 403(b) plan for its employees employed by public schools.
- inclusion of language appearing that general court employees would be provided optional membership in the new plan when they would not be eligible based on the term "retirement system" as used throughout RSA 100-A.
- referencing "procedures adopted by the state treasurer with the advice of the committee" where there are no provision establishing this.
- ambiguous language on who is managing and administering the plan and investments.
 - o "[t]he board of trustees may contract with a third-party administrator for the retirement system defined contribution plan for the administration of assets accumulated under each participant's account."
 - o "The administrator shall provide a range of investment options and permit a participant to exercise investment control over the participant's assets in the member's individual account as provided in this section."
 - o "[t]he administrator of the plan shall be the executive director, who shall have the assistance and services of the department of administrative services for all duties and responsibilities under this subdivision."

Lastly, the NHRS offers no opinion on whether the provisions of the proposed plan would meet the regulatory requirements for a defined contribution plan under the Internal Revenue Code. The NHRS would recommend engagement of qualified legal, actuarial, and pension professionals as to whether the regulatory requirements for the defined contribution plan are met under the Internal Revenue Code, i.e. plan design, documentation, and administration under the applicable federal requirements.

AGENCIES CONTACTED:

New Hampshire Retirement System