

Introduced by

1 A BILL for an Act to create and enact two new subsections of section 54-52-01, a new section  
2 of chapter 54-52, and two new sections of chapter 54-52.6 of the North Dakota Century Code,  
3 relating to participation by peace officers and correctional officers in the defined benefit  
4 retirement plan and the defined contribution retirement plan; and to amend and reenact  
5 subsection 3 of section 54-52-01, section 54-52-02.1, subsection 3 of section 54-52-05,  
6 subsection 3 of section 54-52-17, section 54-52.6-01, subsection 1 of section 54-52.6-02, and  
7 section 54-52.6-03 of the North Dakota Century Code, relating to participation by peace officers  
8 and correctional officers in the defined benefit retirement plan and the defined contribution  
9 retirement plan.

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

11 **SECTION 1.** Two new subsections of section 54-52-01 of the North Dakota Century  
12 Code are created and enacted as follows:

13 "Correctional officer" means a participating member who is certified by the  
14 department of corrections and rehabilitation or the peace officer standards and  
15 training board as a correctional officer and is employed by the department of  
16 corrections and rehabilitation or a political subdivision.

17 "Peace officer" means a participating member who is a peace officer as defined in  
18 section 12-63-01 and is employed as a peace officer.

19 **SECTION 2. AMENDMENT.** Subsection 3 of section 54-52-01 of the North Dakota  
20 Century Code is amended and reenacted as follows:

- 21 3. "Eligible employee" means all permanent employees who meet all of the eligibility  
22 requirements set by this chapter and who are eighteen years or more of age, and  
23 includes appointive and elective officials who elect to remain members of the

retirement system; provided, that judges of the supreme and district courts eligible under section 54-52-02.3 and appointed officials who elect to participate under section 54-52-02.5 are eligible employees and shall participate in the public employees retirement system. Eligible employee does not include nonclassified state employees, peace officers, and correctional officers who elect to become members of the retirement plan established under chapter 54-52.6 but does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board.

**SECTION 3. AMENDMENT.** Section 54-52-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02.1. Political subdivisions authorized to join public employees retirement system.**

1. A political subdivision may, on behalf of its permanent employees, on behalf of its peace officers and correctional officers separately from its other employees, and permanent noncertified employees only in the case of school districts, enter into agreements with the retirement board for the purpose of extending the benefits of the public employees retirement system, as provided in this chapter, to those employees. The agreement may, in accordance with this chapter, contain provisions relating to benefits, contributions, effective date, modification, administration, and other appropriate provisions as the retirement board and the political subdivision agree upon, but the agreement must provide that:
  - a. The political subdivision will contribute on behalf of each eligible employee an amount equal to that provided in section 54-52-06 or section 5 of this Act for peace officers and correctional officers participating separately from other political subdivision employees.
  - b. A portion of the moneys paid by the political subdivision may be used to pay administrative expenses of the retirement board.
2. Notwithstanding any other provision of law, a political subdivision having an existing police pension plan may merge that plan into the public employees retirement system under rules adopted by and in a manner determined by the board.

1           3. Notwithstanding any other provision of this chapter, ~~no~~ a political subdivision of this  
2           state not currently participating in the public employees retirement system ~~on~~  
3           ~~June 30, 1977~~, may thereafter not become a participant in the retirement system  
4           until an actuarial study is performed under the direction of the board to calculate  
5           ~~the cost of that portion of benefits to be paid by the retirement system to the~~  
6           ~~employees of the political subdivision based on any prior service or on any service~~  
7           ~~after June 30, 1977, and before the date of initial participation in the retirement~~  
8           ~~system, or both; and the political subdivision has adopted a method, approved by~~  
9           ~~the board, to pay the costs determined in this subsection over a period not to~~  
10          ~~exceed twenty five years from June 30, 1977. No political subdivision may~~  
11          ~~discontinue participation in the fund without first making such payment to the fund~~  
12          ~~as may be necessary for the fund to pay the future benefits of the eligible~~  
13          ~~employees of the political subdivision as determined on the basis of rules adopted~~  
14          ~~by the board~~ required employer contribution. The required employer contribution  
15          must be an amount determined sufficient to fund the normal cost and amortize any  
16          past service liability over a period not to exceed thirty years as determined by the  
17          board. Any fees incurred in performing the actuarial study must be paid for by the  
18          political subdivision in a manner determined by the board.

19          **SECTION 4. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota  
20          Century Code is amended and reenacted as follows:

21          3. Each employer, at its option, may pay the employee contributions required by  
22          subsection 2 and sections 54-52-06.1 ~~and~~, 54-52-06.2, and section 5 of this Act.  
23          The amount paid must be paid by the employer in lieu of contributions by the  
24          employee. If the state determines not to pay the contributions, the amount that  
25          would have been paid must continue to be deducted from the employee's  
26          compensation. If contributions are paid by the employer, they must be treated as  
27          employer contributions in determining tax treatment under this code and the federal  
28          Internal Revenue Code. If contributions are paid by the employer, they may not be  
29          included as gross income of the employee in determining tax treatment under this  
30          code and the Internal Revenue Code until they are distributed or made available.  
31          The employer shall pay these employee contributions from the same source of

funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board, in writing, by June fifteenth of each odd-numbered year.

**SECTION 5.** A new section of chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

**Contribution by peace officers and correctional officers - Employer contribution.**  
Each peace officer or correctional officer who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment.

**SECTION 6. AMENDMENT.** Subsection 3 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

3. Retirement dates are defined as follows:

a. Normal retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer, is:

(1) The first day of the month next following the month in which the member attains the age of sixty-five years; or

- 1                   (2)    When the member has a combined total of years of service credit and  
2                               years of age equal to eighty-five and has not received a retirement  
3                               benefit under this chapter.
- 4                   b.    Normal retirement date for a national guard security officer or firefighter is the  
5                               first day of the month next following the month in which the national guard  
6                               security officer or firefighter attains the age of fifty-five years and has  
7                               completed at least three consecutive years of employment as a national guard  
8                               security officer or firefighter immediately preceding retirement.
- 9                   c.    Normal retirement date for a peace officer or correctional officer is the first  
10                           day of the month next following the month in which the peace officer or  
11                           correctional officer attains the age of fifty-five years and has completed at  
12                           least three consecutive years of employment as a peace officer or correctional  
13                           officer immediately preceding retirement.
- 14                  d.    Postponed retirement date is the first day of the month next following the  
15                               month in which the member, on or after July 1, 1977, actually severs or has  
16                               severed the member's employment after reaching the normal retirement date.
- 17                  ~~e.~~ e.   Early retirement date, except for a national guard security officer or firefighter  
18                               or a peace officer or correctional officer, is the first day of the month next  
19                               following the month in which the member attains the age of fifty-five years and  
20                               has completed three years of eligible employment. For a national guard  
21                               security officer or firefighter, early retirement date is the first day of the month  
22                               next following the month in which the national guard security officer or  
23                               firefighter attains the age of fifty years and has completed at least three years  
24                               of eligible employment. For a peace officer or correctional officer, early  
25                               retirement date is the first day of the month next following the month in which  
26                               the peace officer or correctional officer attains the age of fifty years and has  
27                               completed at least three years of eligible employment.
- 28                  ~~e.~~ f.   Disability retirement date is the first day of the month after a member  
29                               becomes permanently and totally disabled, according to medical evidence  
30                               called for under the rules of the board, and has completed at least one  
31                               hundred eighty days of eligible employment. For supreme and district court

judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:

- (1) Became disabled during the period of eligible employment; and
- (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

**SECTION 7. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise requires:

1. "Board" means the public employees retirement system board.
2. "Correctional officer" means a participating member who is certified by the department of corrections and rehabilitation or the peace officer standards and training board as a correctional officer and is employed by the department of corrections and rehabilitation or a political subdivision as a correctional officer.
3. "Deferred member" means a person who elected to receive deferred vested retirement benefits under chapter 54-52.
- ~~3.~~ 4. "Eligible employee" means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of

age and who is in a position not classified by the central personnel division. The term also means a peace officer or correctional officer employed by the state of North Dakota who elects to become a participating member and a peace officer and correctional officer employed by a political subdivision that elects to participate on behalf of its peace officers and correctional officers separately from its other employees in the defined contribution retirement plan established under this chapter.

~~4.~~ 5. "Employee" means any person employed by the state, whose compensation is paid out of state funds, or funds controlled or administered by the state or paid by the federal government through any of its executive or administrative officials. The term also means a peace officer and correctional officer employed by a political subdivision that elects to participate in the defined contribution retirement plan established under this chapter.

~~5.~~ 6. "Employer" means the state of North Dakota and a political subdivision that elects to participate on behalf of its peace officer and correctional officer employees.

~~6.~~ 7. "Participating member" means an eligible employee who elects to participate in the defined contribution retirement plan established under this chapter.

8. "Peace officer" means a participating member who is a peace officer as defined by section 12-63-01 and is employed as a peace officer.

~~7.~~ 9. "Permanent employee" means ~~a state~~ an employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

~~8.~~ 10. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and

a participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

**SECTION 8. AMENDMENT.** Subsection 1 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall provide an opportunity for each ~~eligible employee~~ peace officer or correctional officer who is a member of the public employees retirement system on September 30, ~~2004~~ 2003, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, ~~2004~~ 2003, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by ~~an eligible employee~~ a peace officer or correctional officer under this section is irrevocable. The board shall accept written elections under this section from ~~eligible employees~~ peace officers and correctional officers during the period beginning on July 1, 1999, and ending 12:01 a.m. December ~~14, 2004~~ 12, 2003. ~~An eligible employee~~ A peace officer or correctional officer who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. ~~An eligible employee~~ A peace officer or correctional officer who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, ~~2004~~ 2003; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, ~~2002~~ 2004; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, ~~2004~~ 2003. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and a peace officer or correctional officer who is first employed and entered upon the payroll of that person's employer after September 30, 2003, may make an election to participate in the defined contribution retirement plan established under this



chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

**SECTION 9.** A new section of chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

**Political subdivisions authorized to join defined contribution retirement plan.**

1. A political subdivision, on behalf of its peace officers and correctional officers, may enter an agreement with the retirement board for the purpose of extending the benefits of the defined contribution retirement plan, as provided in this chapter, to those employees. The agreement may contain, in accordance with this chapter, provisions relating to contributions, effective date, modification, administration, and other appropriate provisions as the retirement board and the political subdivision may agree, but the agreement must provide that:
  - a. The political subdivision will contribute on behalf of each eligible employee an amount equal to that provided in section 5 of this Act.
  - b. A portion of the moneys paid by the political subdivision may be used to pay administrative expenses of the retirement board.
2. A political subdivision that merges an existing police pension plan into the public employees retirement system must provide an opportunity for its members to elect to participate in the defined contribution retirement plan under rules adopted by and in a manner determined by the board.

**SECTION 10. AMENDMENT.** Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-03. Transfer of accumulated fund balances.** For an individual who elects to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section,

the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, ~~2004~~ 2003, using the two following formulas, and shall transfer the greater of the two amounts obtained:

1. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, ~~2004~~ 2004, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or
2. The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

The board shall calculate the amount to be transferred for persons employed after September 30, ~~2004~~ 2003, using only the formula contained in subsection 2.

**SECTION 11.** A new section of chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

**Contribution by peace officers and correctional officers - Employer contribution.**

Each peace officer and correctional officer who participates in the defined contribution retirement plan established under this chapter is assessed and shall pay monthly four percent of the employee's monthly salary or wage paid to the participant. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount equal to that paid by the employer under section 5 of this Act for peace officer and correctional officer members of the public employees retirement system defined benefit retirement plan. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52.6-09, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment.