

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1257

Introduced by

Representatives Wald, Grande, Klein

Senators Grindberg, Krebsbach, Wardner

1 A BILL for an Act to create and enact chapter 54-52.6 of the North Dakota Century Code,
2 relating to a defined contribution retirement plan for nonclassified state employees; to amend
3 and reenact subsection 3 of section 54-52-01, sections 54-52-02.5, 54-52-26, and subsection 1
4 of section 54-52.1-03.2 of the North Dakota Century Code, relating to definitions, participation
5 by newly appointed officials in a defined contribution retirement plan, confidentiality of records,
6 and retiree health benefit fund contributions under the public employees retirement system; to
7 provide a penalty; and to provide an appropriation and a continuing appropriation.

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

9 **SECTION 1. AMENDMENT.** Subsection 3 of section 54-52-01 of the 1997
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11 3. "Eligible employee" means all permanent employees who meet all of the eligibility
12 requirements set by this chapter and who are eighteen years or more of age, and
13 includes appointive and elective officials ~~at their sole election~~ who elect to remain
14 members of the retirement system; provided, that judges of the supreme and
15 district courts eligible under section 54-52-02.3 and appointed officials ~~eligible who~~
16 elect to participate under section 54-52-02.5 are eligible employees and shall
17 participate in the public employees retirement system. Eligible employee does not
18 include nonclassified state employees who elect to become members of the
19 retirement plan established under chapter 54-52.6 but does include employees of
20 the judicial branch.

21 **SECTION 2. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **54-52-02.5. Newly appointed officials.** After ~~July 1, 1979, any~~ December 31, 1999, a
24 person appointed to an office for the first time must, from and after the date ~~he~~ that person

1 qualifies and takes office, be a participating member of the public employees retirement system
2 unless that person makes an election at any time during the first six months after the date the
3 person takes office to participate in the retirement plan established under chapter 54-52.6. As
4 used in this section, the phrase "for the first time" means a person appointed, who, after ~~July 1,~~
5 ~~1979~~ December 31, 1999, does not hold office as an appointed official at the time of ~~his~~ that
6 person's appointment.

7 **SECTION 3. AMENDMENT.** Section 54-52-26 of the 1997 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **54-52-26. Confidentiality of records.** All records relating to the retirement benefits of
10 a member or a beneficiary under this chapter ~~and~~, chapter 54-52.2, and chapter 54-52.6 are
11 confidential and are not public records. This section does not prohibit any party from obtaining
12 this information from other agencies or governmental sources. Information and records may be
13 disclosed, under rules adopted by the board, only to:

- 14 1. A person to whom the member has given written consent to have the information
15 disclosed.
- 16 2. A person legally representing the member, upon proper proof of representation,
17 and unless the member specifically withholds consent.
- 18 3. A person authorized by a court order.
- 19 4. A member's participating employer, limited to information concerning the member's
20 years of service credit and years of age. Any information provided to the
21 member's participating employer under this subsection must remain confidential.

22 **SECTION 4. AMENDMENT.** Subsection 1 of section 54-52.1-03.2 of the 1997
23 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 24 1. The board shall establish a retiree health benefits fund account with the Bank of
25 North Dakota for the purpose of prefunding and providing hospital benefits
26 coverage and medical benefits coverage under the uniform group insurance
27 program for retired eligible employees or surviving spouses of retired eligible
28 employees and their dependents as provided in this chapter. The state shall
29 contribute monthly to the retiree health benefits fund an amount equal to one
30 percent of the monthly salaries and wages of all participating members of the
31 highway patrolmen's retirement system under chapter 39-03.1, and one percent of

the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6 shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52 or chapter 54-52.6. The employer of a national guard security officer or firefighter shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all national guard security officers or firefighters participating in the public employees retirement system under chapter 54-52. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01. The board, as trustee of the fund and in exclusive control of its administration, shall:

- a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended.
- b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.

SECTION 5. Chapter 54-52.6 of the North Dakota Century Code is created and enacted 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. "Deferred member" means a person who elected to receive deferred vested retirement benefits under chapter 54-52.
3. "Eligible employee" means a permanent state employee, except an employee of the judicial branch, who is eighteen years or more of age and who is in a position not classified by the central personnel division.

- 1 4. "Employee" means any person employed by the state, whose compensation is
2 paid out of state funds, or funds controlled or administered by the state or paid by
3 the federal government through any of its executive or administrative officials.
- 4 5. "Employer" means the state of North Dakota.
- 5 6. "Participating member" means an eligible employee who elects to participate in the
6 defined contribution retirement plan established under this chapter.
- 7 7. "Permanent employee" means a state employee whose services are not limited in
8 duration and who is filling an approved and regularly funded position and is
9 employed twenty hours or more per week and at least five months each year.
- 10 8. "Wages" and "salaries" means earnings in eligible employment under this chapter
11 reported as salary on a federal income tax withholding statement plus any salary
12 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h),
13 or 457. "Salary" does not include fringe benefits such as payments for unused sick
14 leave, personal leave, vacation leave paid in a lump sum, overtime, housing
15 allowances, transportation expenses, early retirement, incentive pay, severance
16 pay, medical insurance, workers' compensation benefits, disability insurance
17 premiums or benefits, or salary received by a member in lieu of previously
18 employer-provided fringe benefits under an agreement between an employee and
19 a participating employer. Bonuses may be considered as salary under this section
20 if reported and annualized pursuant to rules adopted by the board.

21 **54-52.6-02. Election.**

- 22 1. The board shall provide an opportunity for each eligible employee who is a
23 member of the public employees retirement system on December 31, 1999, to
24 elect in writing to terminate membership in the public employees retirement system
25 and elect to become a participating member under this chapter. Except as
26 provided in section 54-52.6-03, an election made by an eligible employee under
27 this section is irrevocable. The board shall accept written elections under this
28 section from eligible employees during the period beginning on the effective date
29 of this Act and ending 12:01 a.m. January 1, 2000. An eligible employee who does
30 not make a written election or who does not file the election during the period
31 specified in this section continues to be a member of the public employees

1 retirement system. An eligible employee who makes and files a written election
2 under this section ceases to be a member of the public employees retirement
3 system effective twelve midnight December 31, 1999; becomes a participating
4 member in the defined contribution retirement plan under this chapter effective
5 12:01 a.m. January 1, 2000; and waives all of that person's rights to a pension,
6 annuity, retirement allowance, insurance benefit, or any other benefit under the
7 public employees retirement system effective December 31, 1999. This section
8 does not affect a person's right to health benefits or retiree health benefits under
9 chapter 54-52.1. An eligible employee who is first employed and entered upon the
10 payroll of that person's employer after December 31, 1999, may make an election
11 at any time during the first six months after the date of employment to participate in
12 the defined contribution retirement plan established under this chapter.

13 2. If an individual who is a deferred member of the public employees retirement
14 system on December 31, 1999, is reemployed and by virtue of that employment is
15 again eligible for membership in the public employees retirement system under
16 chapter 54-52, the individual may elect in writing to remain a member of the public
17 employees retirement system or if eligible to participate in the defined contribution
18 retirement plan established under this chapter to terminate membership in the
19 public employees retirement system and become a participating member in the
20 defined contribution retirement plan established under this chapter. An election
21 made by a deferred member under this section is irrevocable. The board shall
22 accept written elections under this section from a deferred member during the
23 period beginning on the date of the individual's reemployment and ending upon the
24 expiration of sixty days after the date of that reemployment. A deferred member
25 who makes and files a written election to remain a member of the public
26 employees retirement system retains all rights and is subject to all conditions as a
27 member of that retirement system. A deferred member who does not make a
28 written election or who does not file the election during the period specified in this
29 section continues to be a member of the public employees retirement system. A
30 deferred member who makes and files a written election to terminate membership
31 in the public employees retirement system ceases to be a member of the public

employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An employee who elects to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service.

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

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

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

1 based upon the actuarial present value of the individual's accumulated benefit obligation under
2 the public employees retirement system and the assumption that the individual will retire under
3 the earliest applicable normal retirement date. In calculating the actuarial present value of an
4 individual's accumulated benefit obligation, the board shall consider any unfunded liability and
5 apportion any unallocated assets between the transferee and the public employees retirement
6 system fund. The amount transferred must include interest from January 1, 2000, to the date of
7 the transfer, based upon eight percent annual interest, compounded annually.

8 **54-52.6-04. Administration.** The board shall administer the defined contribution
9 retirement plan established under this chapter and the board or vendors contracted for by the
10 board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan.
11 The board has the exclusive authority and responsibility to employ or contract with personnel
12 and for services that the board determines necessary for the proper administration of and
13 investment of assets of the plan, including managerial, professional, legal, clerical, technical,
14 and administrative personnel or services.

15 **54-52.6-05. Direction of investments.** Each participating member shall direct the
16 investment of the individual's accumulated employer and employee contributions and earnings
17 to one or more investment choices within available categories of investment provided by the
18 board.

19 **54-52.6-06. Administrative expenses - Continuing appropriation.** The
20 administrative expenses of the plan must be paid by the participating members who have not
21 closed their accounts in a manner determined by the board. The board or vendors contracted
22 for by the board may charge reasonable administrative expenses and deduct those expenses
23 from a participating member's account in the defined contribution retirement plan established
24 under this chapter. The board shall place any money deducted in an administrative expenses
25 account with the state treasurer. The board may also use funds from the payroll clearing
26 account established pursuant to section 54-52.3-03 to pay for consulting expenses. All moneys
27 in the payroll clearing account, not otherwise appropriated, or so much of the moneys as may
28 be necessary, are appropriated to the board on a continuing basis for the purpose of retaining a
29 consultant as required for the administration of this chapter.

30 **54-52.6-07. Participation in other plans.** A participating member may not participate
31 in any other public sector retirement benefits plan for simultaneous service rendered to the

1 same public sector employer. However, this section does not prohibit a participating member
2 from participating in a retirement plan established by this state or other public sector employer
3 under the federal Internal Revenue Code.

4 **54-52.6-08. Credit of transfers.** The board shall promptly credit the plan account of a
5 participating member who makes an election under this chapter to terminate membership in the
6 public employees retirement system under chapter 54-52 with any amount transferred from the
7 public employees retirement system.

8 **54-52.6-09. Contributions - Penalty.**

9 1. Each participating member shall contribute monthly four percent of the monthly
10 salary or wage paid to the participant, and this assessment must be deducted from
11 the participant's salary in equal monthly installments commencing with the first
12 month of participation in the defined contribution retirement plan established under
13 this chapter.

14 2. The employer shall contribute an amount equal to four and twelve hundredths
15 percent of the monthly salary or wage of a participating member. If the employee's
16 contribution is paid by the employer under subsection 3, the employer shall
17 contribute, in addition, an amount equal to the required employee's contribution.
18 The employer shall pay monthly such contribution into the participating member's
19 account from its funds appropriated for payroll and salary or any other funds
20 available for such purposes. If the employer fails to pay the contributions monthly,
21 it is subject to a civil penalty of fifty dollars and, as interest, one percent of the
22 amount due for each month of delay or fraction thereof after the payment became
23 due.

24 3. Each employer, at its option, may pay the employee contributions required by this
25 section for all compensation earned after December 31, 1999. The amount paid
26 must be paid by the employer in lieu of contributions by the employee. If the
27 employer decides not to pay the contributions, the amount that would have been
28 paid will continue to be deducted from the employee's compensation. If
29 contributions are paid by the employer, they must be treated as employer
30 contributions in determining tax treatment under this code and the federal Internal
31 Revenue Code. Contributions paid by the employer may not be included as gross

1 income of the employee in determining tax treatment under this code and the
2 federal Internal Revenue Code until they are distributed or made available. The
3 employer shall pay these employee contributions from the same source of funds
4 used in paying compensation to the employee. The employer shall pay these
5 contributions by effecting an equal cash reduction in the gross salary of the
6 employee or by an offset against future salary increases or by a combination of a
7 reduction in gross salary and offset against future salary increases. Employee
8 contributions paid by the employer must be treated for the purposes of this chapter
9 in the same manner and to the same extent as employee contributions made
10 before the date on which employee contributions were assumed by the employer.
11 An employer shall exercise its option under this subsection by December 1, 1999,
12 and shall report its choice to the board in writing. The option chosen may not be
13 revoked for the remainder of the biennium. Thereafter, the option choice must be
14 forwarded to the board, in writing, by June fifteenth of each odd-numbered year.

15 **54-52.6-10. Vesting.** A participating member is immediately one hundred percent
16 vested in that member's contributions made to that member's account under this chapter. A
17 participating member vests in the employer contributions made on that member's behalf to an
18 account under this chapter according to the following schedule:

- 19 1. Upon completion of two years of service, fifty percent.
- 20 2. Upon completion of three years of service, seventy-five percent.
- 21 3. Upon completion of four years of service, one hundred percent.

22 A participating member who was a member or deferred member of the public employees
23 retirement system under chapter 54-52 who makes an election to participate in the defined
24 contribution retirement plan pursuant to this chapter, must be credited with the years of service
25 accrued under the public employees retirement system on the effective date of participation in
26 the defined contribution retirement plan for the purpose of meeting vesting requirements for
27 benefits under this section. Any forfeiture as a result of the failure of a participating member to
28 vest in the employer contribution must be deposited in the administrative expenses account.

29 **54-52.6-11. Refund beneficiaries.** A participating or former participating member may
30 nominate one or more individuals as a refund beneficiary by filing written notice of nomination
31 with the board. If the participating member or former participating member is married at the

time of the nomination and the participant's spouse is not the refund beneficiary for one hundred percent of the account, the nomination is not effective unless the nomination is signed by the participant's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

54-52.6-12. Qualified domestic relations orders.

1. The board or a vendor contracted for by the board shall apportion a participating member's account in the defined contribution retirement plan under this chapter in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules adopted by the board for determining the qualified status of domestic relations orders, administering distributions, and apportioning accounts under the qualified orders. Upon determination of the domestic relations order as qualified, the board shall notify the participating member, the named alternate payee, and the vendor, if applicable, of its receipt of the qualified domestic relations order.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of a participating member's account in the defined contribution retirement plan under this chapter. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise allowed under this chapter. However, a qualified domestic relations order may require distribution from an account in the defined contribution retirement plan under this chapter notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must specify:

- a. The name and last known mailing address of the participating member and the name of the mailing address of each alternate payee covered by the order;
- b. The amount or percentage of the participating member's account to be paid to each alternate payee;
- c. The number of payments or period to which the order applies; and
- d. Each retirement plan to which the order applies.

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that person's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.
3. A deferred member or refund beneficiary may elect one or a combination of several of the following methods of distribution of the accumulated balance:
 - a. A lump sum distribution to the recipient.
 - b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
 - c. Periodic distributions, as authorized by the board.
 - d. No current distribution, in which case the accumulated balance must remain in the plan until the deferred member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

54-52.6-14. Disability benefits. The board shall provide a procedure whereby a participating member may use a portion of that person's account contributions under this chapter to purchase disability insurance.

1 **54-52.6-15. Board to provide information.** The board shall provide information to
2 employees who are eligible to elect to become participating members under this chapter. The
3 information must include at a minimum the employee's current account balance, the
4 assumption of investment risk under a defined contribution retirement plan, administrative and
5 investment costs, coordination of benefits information, and a comparison of projected
6 retirement benefits under the public employees retirement system under chapter 54-52 and the
7 retirement plan established under this chapter. Notwithstanding any other provision of law, the
8 board is not liable for any election or investment decision made by an employee based upon
9 information provided to an employee under this chapter.

10 **54-52.6-16. State income tax deductions.** For the purposes of state income tax, the
11 assessment imposed by this chapter on the employee must be treated in accordance with
12 existing state statutes on state income tax.

13 **54-52.6-17. Exemption from state premium tax.** Premiums, consideration for
14 annuities, and membership fees are exempt from premium taxes payable pursuant to section
15 26.1-03-17.

16 **54-52.6-18. Savings clause.** If the board determines that any section of this chapter
17 does not comply with applicable federal statutes or rules, the board shall adopt appropriate
18 terminology with respect to that section as will comply with those federal statutes or rules. Any
19 plan modifications made by the board pursuant to this section are effective until the effective
20 date of any measure enacted by the legislative assembly providing the necessary amendments
21 to this chapter to ensure compliance with the federal statutes or rules.

22 **54-52.6-19. Overpayments.** The board has the right of setoff to recover
23 overpayments made under this chapter and to satisfy any claims arising from embezzlement or
24 fraud committed by a participating member, deferred member, refund beneficiary, or other
25 person who has a claim to a distribution or any other benefit from a plan governed by this
26 chapter.

27 **54-52.6-20. Correction of records.** The board shall correct errors in the records and
28 actions in plans under this chapter and shall seek to recover overpayments and shall make up
29 underpayments.

30 **SECTION 6. APPROPRIATION.** There is hereby appropriated out of any moneys in
31 the administrative expense account under section 54-52.6-06 and the payroll clearing account

1 under section 54-52.3-03, in the state treasury, not otherwise appropriated, the sum of
2 \$197,000, or so much of the sum as may be necessary, to the public employees retirement
3 system board for the purpose of administering this chapter, for the biennium beginning July 1,
4 1999, and ending June 30, 2001. The public employees retirement system board is authorized
5 one additional full-time equivalent position to implement this Act.