

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1100

Introduced by

Government and Veterans Affairs Committee

(At the request of the Public Employees Retirement System)

1 A BILL for an Act to create and enact a new section to chapter 54-52.6 of the North Dakota
2 Century Code, relating to the acceptance of rollover contributions under the defined
3 contribution retirement plan; and to amend and reenact sections 54-52.6-02, 54-52.6-03,
4 54-52.6-13, and 54-52.6-14 of the North Dakota Century Code, relating to participation,
5 calculation of interest on transferred amounts, distribution options, and disability benefits under
6 the defined contribution retirement plan.

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

8 **SECTION 1. AMENDMENT.** Section 54-52.6-02 of the 1999 Supplement to the North
9 Dakota Century Code is amended and reenacted as follows:

10 **54-52.6-02. Election.**

11 1. The board shall provide an opportunity for each eligible employee who is a
12 member of the public employees retirement system on December 31, 1999, to
13 elect in writing to terminate membership in the public employees retirement system
14 and elect to become a participating member under this chapter. Except as
15 provided in section 54-52.6-03, an election made by an eligible employee under
16 this section is irrevocable. The board shall accept written elections under this
17 section from eligible employees during the period beginning on the effective date
18 of this Act and ending 12:01 a.m. January 1, 2000. An eligible employee who does
19 not make a written election or who does not file the election during the period
20 specified in this section continues to be a member of the public employees
21 retirement system. An eligible employee who makes and files a written election
22 under this section ceases to be a member of the public employees retirement
23 system effective twelve midnight December 31, 1999; becomes a participating
24 member in the defined contribution retirement plan under this chapter effective

12:01 a.m. January 1, 2000; 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, 1999. 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 December 31, 1999, 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 ~~to participate in the defined contribution retirement plan established under this chapter.~~ 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.

2. If an individual who is a deferred member of the public employees retirement system on December 31, 1999, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of ~~sixty days~~ six months after the date of that reemployment. 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. A deferred member who makes and files a written election to

1 remain a member of the public employees retirement system retains all rights and
2 is subject to all conditions as a member of that retirement system. A deferred
3 member who does not make a written election or who does not file the election
4 during the period specified in this section continues to be a member of the public
5 employees retirement system. A deferred member who makes and files a written
6 election to terminate membership in the public employees retirement system
7 ceases to be a member of the public employees retirement system effective on the
8 last day of the payroll period that includes the date of the election; becomes a
9 participating member in the defined contribution retirement plan under this chapter
10 effective the first day of the payroll immediately following the date of the election;
11 and waives all of that person's rights to a pension, an annuity, a retirement
12 allowance, insurance benefit, or any other benefit under the public employees
13 retirement system effective the last day of the payroll that includes the date of the
14 election. This section does not affect any right to health benefits or retiree health
15 benefits to which the deferred member may otherwise be entitled.

- 16 3. An eligible employee who elects to participate in the retirement plan established
17 under this chapter must remain a participant even if that employee returns to the
18 classified service or becomes employed by a political subdivision that participates
19 in the public employees retirement system. The contribution amount must be as
20 provided in this chapter, regardless of the position in which the employee is
21 employed. Notwithstanding the irrevocability provisions of this chapter, if a
22 member who elects to participate in the retirement plan established under this
23 chapter becomes a supreme or district court judge, becomes a member of the
24 highway patrol, becomes employed in a position subject to teachers' fund for
25 retirement membership, or becomes an employee of the board of higher education
26 or state institution under the jurisdiction of the board who is eligible to participate in
27 an alternative retirement program established under subsection 13 of section
28 15-10-17, the member's status as a member of the defined contribution retirement
29 plan is suspended, and the member becomes a new member of the retirement
30 plan for which that member's new position is eligible. The member's account
31 balance remains in the defined contribution retirement plan, but no new

1 contributions may be made to that account. The member's service credit and
2 salary history that were forfeited as a result of the member's transfer to the defined
3 contribution retirement plan remain forfeited, and service credit accumulation in the
4 new retirement plan begins from the first day of employment in the new position. If
5 the member later returns to employment that is eligible for the defined contribution
6 plan, the member's suspension must be terminated, the member again becomes a
7 member of the defined contribution retirement plan, and the member's account
8 resumes accepting contributions. At the member's option, and pursuant to rules
9 adopted by the board, the member may transfer any available balance as
10 determined by the provisions of the alternate retirement plan into the member's
11 account under this chapter.

- 12 4. After consultation with its actuary, the board shall determine the method by which
13 a participating member or deferred member may make a written election under this
14 section. If the participating member or deferred member is married at the time of
15 the election, the election is not effective unless the election is signed by the
16 individual's spouse. However, the board may waive this requirement if the
17 spouse's signature cannot be obtained because of extenuating circumstances.
- 18 5. If the board receives notification from the internal revenue service that this section
19 or any portion of this section will cause the public employees retirement system or
20 the retirement plan established under this chapter to be disqualified for tax
21 purposes under the Internal Revenue Code, then the portion that will cause the
22 disqualification does not apply.

23 **SECTION 2. AMENDMENT.** Section 54-52.6-03 of the 1999 Supplement to the North
24 Dakota Century Code is amended and reenacted as follows:

25 **54-52.6-03. Transfer of accumulated fund balances.** For an individual who elects to
26 terminate membership in the public employees retirement system under chapter 54-52, the
27 board shall transfer a lump sum amount from the retirement fund to the participating member's
28 account in the defined contribution retirement plan under this chapter. However, if the
29 individual terminates employment prior to receiving the lump sum transfer under this section,
30 the election made under section 54-52.6-02 is ineffective and the individual remains a member
31 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 employees electing to transfer prior to January 1, 2000, 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, 2000, 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 ~~and employee contributions~~ contribution made ~~pursuant to sections 54-52-05 and 54-52-06, 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 December 31, 1999, using only the formula contained in subsection 2.

SECTION 3. A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

Acceptance of rollovers. The plan may allow a participating member to transfer or rollover funds from other qualified plans into the member's account under rules adopted by the board.

SECTION 4. AMENDMENT. Section 54-52.6-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ former participating 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~~ former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

4. If the former participating member's vested account balance is less than five thousand dollars, the board shall automatically refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 5. AMENDMENT. Section 54-52.6-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ allow distribution of the participating member's vested account balance if the board determines that the participating member has become totally and permanently disabled. If approved, the disabled member has the same distribution options as provided in subdivisions a and c of subsection 3 of section 54-52.6-13. However, if the member chooses the periodic distribution option, the member may only receive distributions for as long as the 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

- 1 no longer meets the eligibility definition, the board shall discontinue the disability retirement
- 2 benefit.