

Fifty-eighth  
Legislative Assembly  
of North Dakota

Introduced by

(At the request of the Public Employees Retirement System)

1 A BILL for an Act to create and enact three new sections to chapter 39-03.1 of the North Dakota  
2 Century Code, relating to postretirement adjustments, Internal Revenue Code compliance, and  
3 employer service purchases under the highway patrolmen's retirement system; to amend and  
4 reenact section 39-03.1-08.2, paragraph 2 of subdivision b of subsection 3 of section  
5 39-03.1-11, and sections 39-03.1-14.1 and 39-03.1-28 of the North Dakota Century Code,  
6 relating to the purchase of additional service credit, retirement age, multiple plan membership,  
7 and confidentiality requirements under the highway patrolmen's retirement system; and to  
8 repeal section 39-03.1-11.1 of the North Dakota Century Code, relating to benefit limitations  
9 under the highway patrolmen's retirement system.

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

11 **SECTION 1. AMENDMENT.** Section 39-03.1-08.2 of the North Dakota Century Code  
12 is amended and reenacted as follows:

13 **39-03.1-08.2. (Contingent expiration date - See note) Purchase of additional**  
14 **service credit.**

- 15 1. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules  
16 adopted by the board for the purchase of additional service credit, but only to the  
17 extent the transfer is a rollover contribution that meets the requirement of  
18 section 408 of the Internal Revenue Code [26 U.S.C. 408].
- 19 2. Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled  
20 to purchase additional credit under this section for active employment in the armed  
21 forces of the United States, for up to four years of credit, if the contributor is not  
22 presently receiving credit for that service. A contributor may not purchase credit  
23 under this subsection if the years claimed also qualify for retirement benefits from  
24 another retirement system.

- 1           3. A contributor may elect to purchase credit for an employer-approved leave of  
2           absence if the contributor is not presently receiving credit for that absence.
- 3           4. ~~A participating contributor who is a vested permanent employee is entitled to~~  
4           ~~purchase additional years of service credit for purposes of subsection 4 of section~~  
5           ~~39-03.1-11 and to enable the contributor to qualify for the normal retirement date~~  
6           ~~defined by subdivision b of subsection 3 of section 39-03.1-11. The board may~~  
7           ~~accept trustee-to-trustee transfers as permitted by Internal Revenue Code section~~  
8           ~~403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b)~~  
9           ~~annuity or Internal Revenue Code section 457 deferred compensation plan for the~~  
10           ~~purchase of permissive service credit, as defined in Internal Revenue Code section~~  
11           ~~415(n)(3)(A), or as repayment of a cashout from a governmental plan under~~  
12           ~~Internal Revenue Code section 415(k)(3).~~
- 13          5. The contributor may purchase credit under this section by paying to the board an  
14           amount equal to the actuarial cost to the fund of providing the credit. The board  
15           shall adopt rules governing the purchase of additional credit under this section.
- 16          6. The board may establish individual retirement accounts and individual retirement  
17           annuities as permitted under section 408(q) of the Internal Revenue Code to allow  
18           employees to make voluntary employee contributions. The board may adopt  
19           appropriate rules as may be necessary to implement and administer the accounts  
20           and annuities under this section.
- 21          7. In addition to service credit identified in this section, a vested member may  
22           purchase up to five years of service credit.

23           **(Contingent effective date - See note) Purchase of additional service credit.**

- 24          1. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules  
25           adopted by the board for the purchase of additional service credit, but only to the  
26           extent the transfer is a rollover contribution that meets the requirement of  
27           section 408 of the Internal Revenue Code [26 U.S.C. 408].
- 28          2. Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled  
29           to purchase additional credit under this section for active employment in the armed  
30           forces of the United States, for up to four years of credit, if the contributor is not  
31           presently receiving credit for that service. A contributor may not purchase credit

under this subsection if the years claimed also qualify for retirement benefits from another retirement system.

3. A contributor may elect to purchase credit for an employer-approved leave of absence if the contributor is not presently receiving credit for that absence.

4. ~~A participating contributor who is a vested permanent employee is entitled to purchase additional years of service credit for purposes of subsection 4 of section 39-03.1-11 and to enable the contributor to qualify for the normal retirement date defined by subdivision b of subsection 3 of section 39-03.1-11.~~ The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A), or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).

5. The contributor may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. The board shall adopt rules governing the purchase of additional credit under this section.

6. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt appropriate rules as may be necessary to implement and administer the accounts and annuities under this section.

7. In addition to service credit identified in this section, a member may purchase up to five years of service credit.

8. Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion.

**SECTION 2.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

**Employer service purchases.** An employer may purchase additional service credit on behalf of a contributor under the following conditions:

1. The contributor may not be given the option to choose between an employer service purchase and an equivalent amount paid in cash.
2. The contributor must meet one of the following conditions at the time the purchase is made:
  - a. The contributor's age plus service credit must be equal to or greater than seventy; or
  - b. The contributor's age must be at least fifty and the contributor must have at least ten years of service credit.
3. The board must determine the purchase price on an actuarially equivalent basis.
4. The purchase must be completed before the contributor's retirement.
5. The employer may purchase a maximum of five years of service credit on behalf of the contributor.
6. The employer must pay the purchase price for the service credit purchased under this section in a lump sum.

**SECTION 3. AMENDMENT.** Paragraph 2 of subdivision b of subsection 3 of section 39-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

- (2) When the contributor has ~~a combined total of years of service credit and years of age~~ equal to ~~eighty~~ twenty-five years and has not received a retirement benefit under this chapter.

**SECTION 4.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

**Internal Revenue Code compliance.** The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code as it applies for governmental plans.

**SECTION 5. AMENDMENT.** Section 39-03.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of benefits.**

1. ~~a.~~ For the purpose of determining eligibility for benefits under this chapter, a member's years of service is the total of the years of service earned under this chapter and the years of service employment or years of service credit

earned in any number of the following, the total of which may not exceed twelve months of credit per year:

- (1) a. The public employees retirement system.
- (2) b. The teachers' fund for retirement.
- c. The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education.

~~b.~~ 2. If a member terminates eligible employment under this chapter, if that member has not received a refund of the member's accumulated deductions, and if that member begins eligible employment in a plan described in ~~paragraph 1~~ subdivision a or 2 b of ~~subdivision a~~ subsection 1, that member may elect to remain an inactive member of the system without refund of the member's accumulated deductions. The election must be made within ninety days after beginning the eligible employment ~~or by October 1, 1987, whichever is later.~~ The board shall terminate the inactive status of a member under this subdivision if the member gains eligible employment under this chapter or if the member terminates eligible employment under a plan described in ~~paragraph 1~~ subdivision a or 2 b of ~~subdivision a~~ subsection 1.

~~e.~~ 3. A Pursuant to rules adopted by the board, a member who has service credit in the system and in any number of the alternate plans described in paragraphs 1 and 2 subdivision a or b of subdivision a subsection 1 is entitled to benefits under this chapter. ~~The employee may elect to have benefits calculated by using the certified salaries of the retirement plan of last membership~~ using the benefit formula in section 39-03.1-11 under either of the following calculation methods:

- a. By using the average of the highest salary received by the member for any consecutive thirty-six months employed during the last one hundred twenty months of employment in the highway patrolmen's retirement system. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.

b. Using the average of the highest salary received by the member for any thirty-six consecutive months during the last one hundred twenty months of employment, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

~~2. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.~~

**SECTION 6. AMENDMENT.** Section 39-03.1-28 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-28. Confidentiality of records.** ~~Information pertaining to a contributor's accumulated deductions, disability applications and benefits, and surviving spouse applications and benefits under this chapter is confidential and is not a public record.~~ All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The information and records may be disclosed, under rules adopted by the board only to:

1. A person to whom the ~~contributor~~ member has given written consent to have the information disclosed.
2. A person legally representing the ~~contributor~~ member, upon proper proof of representation, and unless the ~~contributor~~ member specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.

1       5.   The administrative staff of the retirement and investment office for purposes  
2       relating to membership and benefits determination.

3       6.   State or federal agencies for purposes of reporting on a service provider's  
4       provision of services or when the employer must supply information to an agency  
5       to validate the employer's compliance with existing state or federal laws.

6       7.   Member interest groups approved by the board on a third-party blind list basis,  
7       limited to information concerning the member's participation, name, and address.

8       8.   The member's spouse or former spouse, that individual's legal representative, and  
9       the judge presiding over the member's dissolution proceeding for purposes of  
10      aiding the parties in drafting a qualified domestic relations order under section  
11      39-03.1-14.2. The information disclosed under this subsection must be limited to  
12      information necessary for drafting the order.

13      9.   Beneficiaries designated by a participating member or a former participating  
14      member to receive benefits after the member's death, but only after the member's  
15      death.

16      **SECTION 7.** A new section to chapter 39-03.1 of the North Dakota Century Code is  
17      created and enacted as follows:

18      **Postretirement adjustments.** An individual or the individual's beneficiary who, on  
19      July 31, 2003, is receiving retirement benefits under this chapter is entitled to receive an  
20      increase in benefits equal to two percent of the individual's present benefits with the increase  
21      payable beginning August 1, 2003. An individual or the individual's beneficiary who, on July 31,  
22      2004, is receiving retirement benefits under this chapter is entitled to receive an increase in  
23      benefits equal to two percent of the individual's present benefits with the increase payable  
24      beginning August 1, 2004.

25      **SECTION 8. REPEAL.** Section 39-03.1-11.1 of the North Dakota Century Code is  
26      repealed.