

Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Wald

1 A BILL for an Act to amend and reenact subsection 3 of section 54-52-01 and sections
2 54-52.6-01, 54-52.6-02, and 54-52.6-03 of the North Dakota Century Code, relating to eligibility
3 to participate in the defined contribution retirement plan.

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

5 **SECTION 1. AMENDMENT.** Subsection 3 of section 54-52-01 of the North Dakota
6 Century Code is amended and reenacted as follows:

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

18 **SECTION 2. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise
21 requires:

- 22 1. "Board" means the public employees retirement system board.
- 23 2. "Deferred member" means a person who elected to receive deferred vested
- 24 retirement benefits under chapter 54-52.

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

28 **SECTION 3. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **54-52.6-02. Election.**

- 1 1. The board shall provide an opportunity for each eligible employee who is a
2 member of the public employees retirement system on September 30, ~~2001~~, and
3 ~~who has not made a written election under this section to transfer to the defined~~
4 ~~contribution retirement plan before October 1, 2001~~ 2004, to elect in writing to
5 terminate membership in the public employees retirement system and elect to
6 become a participating member under this chapter. Except as provided in section
7 54-52.6-03, an election made by an eligible employee under this section is
8 irrevocable. The board shall accept written elections under this section from
9 eligible employees during the period beginning on July 1, ~~1999~~ 2003, and ending
10 12:01 a.m. December ~~14, 2001~~ 10, 2004. An eligible employee who does not
11 make a written election or who does not file the election during the period specified
12 in this section continues to be a member of the public employees retirement
13 system. An eligible employee who makes and files a written election under this
14 section ceases to be a member of the public employees retirement system
15 effective twelve midnight December 31, ~~2004~~ 2004; becomes a participating
16 member in the defined contribution retirement plan under this chapter effective
17 12:01 a.m. January 1, ~~2002~~ 2005; and waives all of that person's rights to a
18 pension, annuity, retirement allowance, insurance benefit, or any other benefit
19 under the public employees retirement system effective December 31, ~~2004~~ 2004.
20 This section does not affect a person's right to health benefits or retiree health
21 benefits under chapter 54-52.1. An eligible employee who is first employed and
22 entered upon the payroll of that person's employer after September 30, ~~2001~~ 2004,
23 may make an election to participate in the defined contribution retirement plan
24 established under this chapter at any time during the first six months after the date
25 of employment. If the board, in its sole discretion, determines that the employee
26 was not adequately notified of the employee's option to participate in the defined
27 contribution retirement plan, the board may provide the employee a reasonable
28 time within which to make that election, which may extend beyond the original
29 six-month decision window.
- 30 2. If an individual who is a deferred member of the public employees retirement
31 system on September 30, ~~2001~~ 2004, is reemployed and by virtue of that

1 employment is again eligible for membership in the public employees retirement
2 system under chapter 54-52, the individual may elect in writing to remain a
3 member of the public employees retirement system or if eligible to participate in the
4 defined contribution retirement plan established under this chapter to terminate
5 membership in the public employees retirement system and become a participating
6 member in the defined contribution retirement plan established under this chapter.

7 An election made by a deferred member under this section is irrevocable. The
8 board shall accept written elections under this section from a deferred member
9 during the period beginning on the date of the individual's reemployment and
10 ending upon the expiration of six months after the date of that reemployment. If
11 the board, in its sole discretion, determines that the employee was not adequately
12 notified of the employee's option to participate in the defined contribution
13 retirement plan, the board may provide the employee a reasonable time within
14 which to make that election, which may extend beyond the original six-month
15 decision window. A deferred member who makes and files a written election to
16 remain a member of the public employees retirement system retains all rights and
17 is subject to all conditions as a member of that retirement system. A deferred
18 member who does not make a written election or who does not file the election
19 during the period specified in this section continues to be a member of the public
20 employees retirement system. A deferred member who makes and files a written
21 election to terminate membership in the public employees retirement system
22 ceases to be a member of the public employees retirement system effective on the
23 last day of the payroll period that includes the date of the election; becomes a
24 participating member in the defined contribution retirement plan under this chapter
25 effective the first day of the payroll immediately following the date of the election;
26 and waives all of that person's rights to a pension, an annuity, a retirement
27 allowance, insurance benefit, or any other benefit under the public employees
28 retirement system effective the last day of the payroll that includes the date of the
29 election. This section does not affect any right to health benefits or retiree health
30 benefits to which the deferred member may otherwise be entitled.

- 1 3. An eligible employee who elects to participate in the retirement plan established
2 under this chapter must remain a participant even if that employee ~~returns to the~~
3 ~~classified service or~~ becomes employed by a political subdivision that participates
4 in the public employees retirement system. The contribution amount must be as
5 provided in this chapter, regardless of the position in which the employee is
6 employed. Notwithstanding the irrevocability provisions of this chapter, if a
7 member who elects to participate in the retirement plan established under this
8 chapter becomes a supreme or district court judge, becomes a member of the
9 highway patrol, becomes employed in a position subject to teachers' fund for
10 retirement membership, or becomes an employee of the board of higher education
11 or state institution under the jurisdiction of the board who is eligible to participate in
12 an alternative retirement program established under subsection 6 of section
13 15-10-17, the member's status as a member of the defined contribution retirement
14 plan is suspended, and the member becomes a new member of the retirement
15 plan for which that member's new position is eligible. The member's account
16 balance remains in the defined contribution retirement plan, but no new
17 contributions may be made to that account. The member's service credit and
18 salary history that were forfeited as a result of the member's transfer to the defined
19 contribution retirement plan remain forfeited, and service credit accumulation in the
20 new retirement plan begins from the first day of employment in the new position. If
21 the member later returns to employment that is eligible for the defined contribution
22 plan, the member's suspension must be terminated, the member again becomes a
23 member of the defined contribution retirement plan, and the member's account
24 resumes accepting contributions. At the member's option, and pursuant to rules
25 adopted by the board, the member may transfer any available balance as
26 determined by the provisions of the alternate retirement plan into the member's
27 account under this chapter.
- 28 4. After consultation with its actuary, the board shall determine the method by which a
29 participating member or deferred member may make a written election under this
30 section. If the participating member or deferred member is married at the time of
31 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.

SECTION 4. 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~~ 2004, 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~~ 2005, 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~~ 2004, using only the formula contained in subsection 2.