

**Fifty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2058  
(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

AN ACT to create and enact sections 54-52-02.11 and 54-52-02.12, a new subsection to section 54-52-17.4, two new sections to chapter 54-52, three new subsections to section 54-52-26, section 54-52.2-03.3, and two new sections to chapter 54-52.6 of the North Dakota Century Code, relating to participation, service credit purchases, confidentiality under the public employees retirement system, contributions to a defined contribution plan account, qualified domestic relations order applicability to the deferred compensation program, and compliance with the Internal Revenue Code; to amend and reenact section 28-22-19, subsections 3, 7, 10, and 14 of section 54-52-01, sections 54-52-02 and 54-52-02.5, subsection 3 of section 54-52-05, sections 54-52-17, 54-52-17.2, 54-52-17.4, and 54-52-27, subsection 1 of section 54-52.1-03.3, section 54-52.2-06, and subsection 4 of section 54-52.6-13 of the North Dakota Century Code, relating to exemptions from legal process, definitions, membership, contributions, benefits, service credit, conversion of sick leave, and retiree health benefits under the public employees retirement system and account refunds for members of the defined contribution retirement system; and to repeal section 54-52-17.8 of the North Dakota Century Code, relating to benefit limitations under the public employees retirement system.

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

**SECTION 1. AMENDMENT.** Section 28-22-19 of the North Dakota Century Code is amended and reenacted as follows:

**28-22-19. Exemptions from legal process - Public pensions, assistance, and awards.**

The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, ~~and 54-52-17.6, and 54-52.2-03.3~~, a state agency, a political subdivision of the state, or a firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 54-23.4 as compensation for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

**SECTION 2. AMENDMENT.** Subsections 3, 7, 10, and 14 of section 54-52-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and 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 under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12.~~ Eligible employee does not include nonclassified state employees 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.

7. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.
10. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least ~~five months~~ twenty weeks each year of employment.
14. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.

**SECTION 3. AMENDMENT.** Section 54-52-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02. Formulation of plan - Exclusion of employees covered by plans in existence.**

All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison diversion conservancy district, district health units, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state and political subdivision employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents and which by its provisions will improve state and political subdivision employment, reduce excessive personnel turnover, and offer career employment to high-grade men and women. However, a city health department providing health services in a city-county health district formed under chapter 23-35 is not required to participate in the public employees retirement system but may participate in the public employees retirement system under section 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the state is contributing, except social security, are not eligible for duplicate coverage except as provided under sections 39-03.1-14.1 and 54-52-17.2.

**SECTION 4. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02.5. Newly elected and appointed state officials.** After December 31, 1999, a person elected or appointed to an a state office for the first time must, from and after the date that person qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the first time" means a person appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that person's appointment.

**SECTION 5.** Section 54-52-02.11 of the North Dakota Century Code is created and enacted as follows:

**54-52-02.11. Participation requirements for nonstate elected officials.** Elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.

**SECTION 6.** Section 54-52-02.12 of the North Dakota Century Code is created and enacted as follows:

**54-52-02.12. Participation requirements for nonstate appointed officials.** Nonstate appointed officials of participating employers appointed on or after August 1, 1999, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.

**SECTION 7. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1 and 54-52-06.2 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 6 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. 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 8. AMENDMENT.** Section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-17. Formulation of plan.** Participating members shall receive benefits according to this section and according to rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date, postponed retirement date, or early retirement date, as defined in this section. Part-time employment will be recognized as full-time employment on a prorated basis as the board may prescribe.
2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. Months not employed are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment.
3. Retirement dates are defined as follows:
  - a. Normal retirement date, except for a national guard security officer or firefighter, is:
    - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or

- (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
- b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.
- c. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.
- d. Early retirement date, except for a national guard security officer or firefighter, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment.
- e. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one 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.

4. The board shall calculate retirement benefits as follows:
  - a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:
    - (1) Service benefit equals two percent of final average salary multiplied by the number of years of service employment.
    - (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.

- b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:
    - (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
    - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
  - c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.
  - d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
  - e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.
  - f. ~~A participating member who is a vested permanent employee is entitled to purchase additional years of service credit to enable the member to qualify for the normal retirement date defined by subdivision a of subsection 3. The years of service purchased must be added to the years of service employment under paragraph 1 of subdivision a for calculating the service benefit.~~
- 5. Upon termination of employment after completing three years of eligible employment, except for supreme and district court judges, who must complete five years of eligible employment, but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date equal to one hundred percent of the member's accrued single life benefits.
  - 6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the

predeceased beneficiary's share to the remaining primary beneficiaries. If there are no remaining primary beneficiaries, the board shall pay the member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:

- a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:
  - (1) A lump sum payment of the member's retirement account as of the date of death.
  - (2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.
- b. The surviving spouse of all other members may select one of the following options:
  - (1) A lump sum payment of the member's retirement account as of the date of death.
  - (2) Payments for sixty months as calculated for the deceased member as if the member was of normal retirement age at the date of death.
  - (3) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.
  - (4) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.
7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board shall automatically refund a member's account balance if the member has completed less than three years of eligible employment and was not a supreme or district court judge. If the member was a supreme or district court judge, the board shall automatically refund a member's account balance if the member completed less than five years of eligible employment. A 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 account balance remain in the fund.
8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a member receiving retirement benefits or the member's surviving spouse receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate.

9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
  - a. Single life.
  - b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.
  - c. An actuarially equivalent level social security option, which is available only to members who retire prior to attaining the age at which they may begin to receive unreduced social security benefits.
  - d. Life with five-year or ten-year certain options.

Except for supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a single life benefit. For supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension with fifty percent of the benefit continuing for the life of the surviving spouse, if any.

10. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code.
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).
12. 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 rules to implement and administer the accounts and annuities under this section.

**SECTION 9. AMENDMENT.** Section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-17.2. Multiple plan membership - Eligibility for benefits - Amount of benefits.**

1. a. For the purpose of determining eligibility for benefits under this chapter, an employee's years of service ~~employment~~ credit is the total of the years of service ~~employment~~ credit earned in the public employees retirement system and the years of service credit earned in any number of the following:
  - (1) The teachers' fund for retirement.
  - (2) The highway patrolmen's retirement system.
  - (3) 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.

Service credit may not exceed twelve months of credit per year.

- b. ~~If an employee terminates eligible employment under the system, if that employee has not received a refund of the employee's account balance, and if the employee begins eligible employment in a plan described in paragraph 1, 2, or 3 of subdivision a, that employee may elect to remain an inactive member of the system without refund of the employee's account balance. The election must be made within ninety days after beginning the eligible employment. The board shall terminate the inactive status of an employee under this subdivision if the employee gains eligible employment under this chapter or if the employee terminates eligible employment under a plan described in paragraph 1, 2, or 3 of subdivision a.~~
- e. An Pursuant to rules adopted by the board, an employee who has service credit in the system and in any number of the plans described in paragraphs 1; and 2; and 3 of subdivision a is entitled to benefits under this chapter calculated by using the certified salaries of the retirement plan of last membership. The employee may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:
- (1) The average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment in the public employees 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.
  - (2) 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 any of the three eligible employers under this subdivision, 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 credit earned under this chapter.

2. a. ~~If an employee, who is a participating member, is also employed in any position where membership in the teachers' fund for retirement is required, then for purposes of current employment the employee is a member of the retirement system in which the employee has the most years of service employment. If the employee has an equal amount of service in both the public employees retirement system and the teachers' fund for retirement, the employee is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the employee the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the employee is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that retirement system. If the employee is required to be a member of the teachers' fund for retirement, the board, at the employee's election, shall designate the employee an inactive member of the public employees retirement system until the employee ceases the employment which requires membership in both the public employees retirement system and the teachers' fund for retirement who is eligible to participate in the public employees retirement system is also employed in any position when membership in an alternate retirement system is required, then, for purposes of current participation, the employee is a member of each applicable retirement system. The employer shall pay over to each retirement system the member assessment and employer contributions at the rates currently existing for that retirement system.~~

- b. If an employee described in subdivision a was employed prior to August 1, 2003, and has dual membership rights, the employee may elect to begin participation in the alternate plan pursuant to the plan provisions on August 1, 2003, or may continue participation according to the plan provisions in effect on July 31, 2003. An employee's election under this subdivision is ineffective unless delivered to the public employees retirement system administrative offices by five p.m. on October 31, 2003. If an election is not received by the public employees retirement system, the participation and benefit calculation requirements in effect on July 31, 2003, apply to that employee.
3. ~~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, 2, or 3 of subdivision a of subsection 1, repurchase that service credit that was canceled.~~

**SECTION 10.** A new subsection to section 54-52-17.4 of the North Dakota Century Code is created and enacted as follows:

In addition to service credit identified in this section, a vested member may purchase up to five years of service credit unrelated to any other eligible service.

**SECTION 11. AMENDMENT.** Section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-17.4. (Contingent effective date and expiration date - See note) Purchase of additional credit.**

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
  - a. Active employment in the armed forces of the United States, except as provided in subsection 5, for up to four years of credit.
  - b. Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter employer either within or outside the state of North Dakota.
  - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
  - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
  - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.
  - f. ~~Employment as a permanent employee of a governmental unit not located in North Dakota.~~
  - g. Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:

- a. Employer-approved leave of absence; or
  - b. Months away from work while participating as a seasonal employee.
3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
- a. Except as provided in subsection 5, for up to four years of credit for active employment in the armed forces of the United States.
  - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.
  - c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges retirement system.
4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.
5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the ~~member's most recent monthly salary~~ the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased, ~~plus interest at a rate determined by the board.~~ If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the ~~member's present monthly salary~~ the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding

that period, times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

**(Contingent effective date and expiration date - See note) Purchase of additional credit.**

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
  - a. Active employment in the armed forces of the United States, except as provided in subsection 5, for up to four years of credit.
  - b. Employment as a permanent employee by a ~~governmental unit that does not participate in the public employees retirement system under this chapter~~ employer either within or outside the state of North Dakota.
  - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
  - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
  - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.
  - f. ~~Employment as a permanent employee of a governmental unit not located in North Dakota.~~
  - g. Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:
  - a. Employer-approved leave of absence; or
  - b. Months away from work while participating as a seasonal employee.
3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
  - a. Except as provided in subsection 5, for up to four years of credit for active employment in the armed forces of the United States.
  - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.
  - c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges retirement system.
4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of

return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.

5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the ~~member's most recent monthly salary~~ the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased, plus interest at a rate determined by the board. If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the ~~member's present monthly salary~~ the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.
6. 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. If the member elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 3 of section 54-52-05 apply to the purchase arrangement.

**SECTION 12.** A new section to chapter 54-52 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 13.** A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

**Employer service purchases.** A participating employer may purchase additional service credit on behalf of a member under the following conditions:

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

**SECTION 14.** Three new subsections to section 54-52-26 of the North Dakota Century Code are created and enacted as follows:

Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death. Information relating to beneficiaries may be disclosed to other beneficiaries of the same member.

The general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member.

Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.

**SECTION 15. AMENDMENT.** Section 54-52-27 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-27. ~~Conversion~~ Purchase of sick leave credit.** At termination of eligible employment a member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the member's employer, if the member or the member's employer pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the percent of employer and employee contributions to the retirement program of the member, plus one percent for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of the member's certified sick leave. All conversion payments must be made within sixty days of termination of employment and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.

**SECTION 16. AMENDMENT.** Subsection 1 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The following persons are entitled to receive credit for hospital and medical benefits coverage under subsection 2:
  - a. ~~A member or surviving spouse of the highway patrolmen's retirement system receiving retirement benefits, or the surviving spouse of a member of the highway~~

~~patrolmen's retirement system who was eligible to receive or was receiving retirement benefits, under section 39-03.1-14 is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.~~

- b. ~~A member or surviving spouse of the public employees retirement system receiving retirement benefits, or the surviving spouse of a member of the public employees retirement system who was eligible to receive or was receiving retirement benefits, under section 54-52-17 is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.~~
- c. ~~A member or surviving spouse of the retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits, or the surviving spouse of a member of that retirement program who was eligible to receive or was receiving retirement benefits, under the plan provisions of that retirement program is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.~~
- d. ~~A retired judge or surviving spouse receiving retirement benefits under the retirement program established under chapter 27-17, or the surviving spouse of a retired judge who was eligible to receive or was receiving retirement benefits, under section 27-17-04 is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.~~
- e. ~~A former participating member of the defined contribution retirement plan receiving retirement benefits, or the surviving spouse of a former participating member of that retirement plan who was eligible to receive or was receiving benefits, under section 54-52.6-13, is eligible as determined by the board pursuant to its rules.~~

**SECTION 17.** Section 54-52.2-03.3 of the North Dakota Century Code is created and enacted as follows:

**54-52.2-03.3. Benefit payments to alternate payee under qualified domestic relations order.**

- 1. The board or a vendor contracted for by the board shall apportion a participating member's account in the deferred compensation 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 the board to determine if the domestic relations order is qualified under this section and pursuant to the plan document established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders.
- 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, and 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 the benefits payable to the participating member. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under this chapter, or to provide increased benefits. A qualified domestic relations order must specify:
  - a. The name and the last-known mailing address of the participating member and the name and mailing address of each alternate payee covered by the order;
  - b. The amount or percentage of the participating member's benefits to be paid by the plan to each alternate payee;

- c. That the alternate payee must take a lump sum payment of the benefits allocated to the alternate payee within one hundred twenty days of the later of the board's acceptance of the qualified domestic relations order or the entry of the order by the court; and
- d. Each plan to which the order applies.

**SECTION 18.** A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

**Additional employer contributions.** Additional lump sum contributions by an employer to a participating member's defined contribution retirement plan account may be made if the participating member has twenty-five years of service, has not retired, and has not received a retirement benefit under this chapter. Contributions may be made in an amount actuarially equivalent to the amounts determined pursuant to chapter 54-52 as follows:

- 1. For the conversion of sick leave pursuant to section 54-52-27;
- 2. The equivalent of up to five years of service credit unrelated to any other eligible service as provided in subsection 5 of section 13 of this Act.

**SECTION 19.** A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

**Contributions for military service.** A participating member, or a member not presently under covered employment, may request credit and contributions for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding such period, times the number of months for which the member is making contributions. If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding such period, times the number of months for which the member made contributions. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months for which the member made contributions. For credit before July 1, 1966, no contribution is required.

**SECTION 20. AMENDMENT.** Section 54-52.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.2-06. Deferred compensation program - Benefits - Taxation - Exemption from judicial process - Assignment.** The deferred compensation program established by this chapter shall exist and serve in addition to retirement, pension, or benefit systems established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall effect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the employee. Any unpaid benefits under the deferred compensation program

established by this chapter are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, except as provided by section 54-52.2-03.3. Neither the employee, the employee's beneficiary, nor any designee of the employee or the employee's beneficiary has the right to commute, sell, assign, transfer, or otherwise convey the right to receive payments under this chapter.

**SECTION 21. AMENDMENT.** Subsection 4 of section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

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~~ one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

**SECTION 22. REPEAL.** Section 54-52-17.8 of the North Dakota Century Code is repealed.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2058.

Senate Vote:      Yeas    47            Nays    0            Absent    0

House Vote:      Yeas    82            Nays    0            Absent    12

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2003,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State