

Fifty-ninth  
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 a new subsection to section 54-52.6-02 of the North  
2 Dakota Century Code, relating to temporary employee participation in the defined contribution  
3 retirement plan under the public employees retirement system; to amend and reenact  
4 subsection 3 of section 39-03.1-10.1, subsections 3 and 9 of section 39-03.1-11, sections  
5 39-03.1-11.2, 39-03.1-28, and 39-03.1-30, subsection 11 of section 54-52-01, subsection 3 of  
6 section 54-52-04, subsections 9 and 10 of section 54-52-17, subsection 5 of section  
7 54-52-17.4, section 54-52-28, subsection 3 of section 54-52.6-01, and sections 54-52.6-09.3  
8 and 54-52.6-13 of the North Dakota Century Code, relating to the purchase of service credit for  
9 qualified military service, highway patrol disability and retirement options, compliance with  
10 Internal Revenue Code provisions, confidentiality of records, purchase of sick leave, eligibility  
11 for the law enforcement retirement plan, employee criminal history record investigation,  
12 temporary employee participation in the defined contribution retirement plan, and retirement  
13 benefit options under the public employees retirement system; and to repeal section 54-52-19.2  
14 of the North Dakota Century Code, relating to prior service credit under the public employees  
15 retirement system.

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

17 **SECTION 1. AMENDMENT.** Subsection 3 of section 39-03.1-10.1 of the North Dakota  
18 Century Code is amended and reenacted as follows:

19 3. A participating member may elect to purchase, or a member not presently under  
20 covered employment, may request credit for qualified military service credit  
21 pursuant to the Uniformed Services Employment and Reemployment Rights Act of  
22 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] at any time prior to  
23 retirement by submitting a valid application and paying the member portion  
24 pursuant to rules adopted by the board. It is the responsibility of the applicant to

1 ~~supply any documentation required by the board.~~ The member shall submit a  
2 qualified application with proof of eligible military service to the board in order to  
3 receive credit for military service. For credit on and after July 1, 1966, the  
4 employer must elect whether it will pay the employees' contributions or require the  
5 employees to pay those contributions. In the absence of an election, the pickup  
6 methodology used by the employer pursuant to subsection 2 of section 39-03.1-09  
7 at the time the employee began eligible military service controls. If the employer  
8 has elected to pay the employee contribution, the employer also has the option to  
9 purchase qualified military service credit for employees who were on leave for  
10 active service prior to August 1, 2005. The employee contribution to be paid  
11 equals ten and thirty-hundredths percent times the salary the member would have  
12 received but for the period of service or, if that amount is not reasonably certain,  
13 the member's average rate of compensation during the twelve-month period  
14 immediately preceding the member's period of service or, if shorter, the period of  
15 employment immediately preceding that period times the number of months of  
16 credit being purchased. If the employee contribution is paid, the governmental unit  
17 or, in the case of a member not under covered employment, the last employing  
18 governmental unit, shall pay sixteen and seventy-hundredths percent times the  
19 salary the member would have received but for the period of service or, if that  
20 amount is not reasonably certain, the member's average rate of compensation  
21 during the twelve-month period immediately preceding the member's period of  
22 service or, if shorter, the period of employment immediately preceding that period  
23 times the number of months of credit being purchased. In addition, the  
24 governmental unit or, in the case of a member not under covered employment, the  
25 last employing governmental unit, shall pay to the retiree health benefits fund  
26 established under section 54-52.1-03.2 the percentage required by section  
27 54-52.1-03.2 times the salary the member would have received but for the period  
28 of service or, if that amount is not reasonably certain, the member's average rate of  
29 compensation during the twelve-month period immediately preceding the  
30 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.

**SECTION 2. AMENDMENT.** Subsections 3 and 9 of section 39-03.1-11 of the North Dakota Century Code are amended and reenacted as follows:

3. Retirement dates are as follows:

a. Early retirement date is the first day of the month next following the month in which the contributor attains the age of fifty years and has completed at least ten years of eligible employment.

b. Normal retirement date is:

(1) The first day of the month next following the month in which the contributor attains the age of fifty-five years and has completed at least ten years of eligible employment; or

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

c. Postponed retirement date is the first day of the month next following the month in which the contributor attains the age of sixty years.

d. Disability retirement date is the first day of the month after a contributor 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 employment. Permanent and total disability is based solely on a contributor's inability to perform the contributor's duties arising out of physical or mental impairment.

9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

a. A An actuarially equivalent joint and survivor one hundred percent option.

b. ~~Life~~ An actuarially equivalent life with ~~five-year or ten-year or twenty-year~~ certain options.

c. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

Unless a contributor requests that the contributor 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 a fifty percent option to the surviving spouse.

**SECTION 3. AMENDMENT.** Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-11.2. 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 in effect on August 1, 2005, as it applies for governmental plans.

**SECTION 4. 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.** 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 member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the 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.
5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.
6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.

7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.
8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 39-03.1-14.2. The information disclosed under this subsection must be limited to information necessary for drafting the order.
9. 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.
10. Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.
11. 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.

**SECTION 5. AMENDMENT.** Section 39-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-30. Conversion of sick leave.** 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 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 employer and employee contribution, plus ~~one percent~~ the required contribution 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 that person's certified sick leave. All conversion payments must be made within sixty days of termination and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.

**SECTION 6. AMENDMENT.** Subsection 11 of section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

**SECTION 7. AMENDMENT.** Subsection 3 of section 54-52-04 of the North Dakota Century Code is amended and reenacted as follows:

3. The board shall authorize the creation of whatever staff it deems necessary for sound and economical administration of the system. The executive director shall hire the staff, subject to the approval of the board. The executive director shall secure a complete set of fingerprints of any employee of the office who has unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director. The executive director shall ensure that the fingerprints are submitted to the bureau of criminal investigation for verification of the identity of the employee and to obtain criminal history record information and to the federal bureau of investigation for a nationwide background check. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 and the response of the federal bureau of investigation to the public employees retirement system.

**SECTION 8. AMENDMENT.** Subsections 9 and 10 of section 54-52-17 of the North Dakota Century Code are amended and reenacted as follows:

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 Actuarially equivalent life with five-year or ten-year or twenty-year certain options.
- e. An actuarially equivalent joint and survivor level social security option, with fifty percent or one hundred percent options, which is available only to members who retire before attaining the age at which they may begin to receive unreduced social security benefits.
- f. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

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.

**SECTION 9. AMENDMENT.** Subsection 5 of section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

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~~ employer must

1 elect whether it will pay the employees' contributions under this subsection or  
2 require its employees to pay those contributions. In the absence of an election, the  
3 pickup methodology used by the employer pursuant to subsection 3 of section  
4 54-52-05 at the time the employee began eligible military service controls. If the  
5 employer has elected to pay the employee contribution, the employer also has the  
6 option to purchase qualified military service credit for employees who were on  
7 leave for active service prior to August 1, 2005. The employee contribution to be  
8 paid equals four percent times the salary the member would have received but for  
9 the period of service or, if that amount is not reasonably certain, the member's  
10 average rate of compensation during the twelve-month period immediately  
11 preceding the member's period of service or, if shorter, the period of employment  
12 immediately preceding that period; times the number of months of credit being  
13 purchased. ~~If the member makes the above payment~~ employee contribution is  
14 paid, the governmental unit; or, in the case of a member not under covered  
15 employment, the last employing governmental unit, shall pay four and  
16 twelve-hundredths percent times the salary the member would have received but  
17 for the period of service or, if that amount is not reasonably certain, the member's  
18 average rate of compensation during the twelve-month period immediately  
19 preceding the member's period of service or, if shorter, the period of employment  
20 immediately preceding that period; times the number of months of credit being  
21 purchased. In addition, the governmental unit; or, in the case of a member not  
22 under covered employment, the last employing governmental unit, shall pay to the  
23 retiree health benefits fund established under section 54-52.1-03.2 the percentage  
24 required by section 54-52.1-03.2 times the salary the member would have received  
25 but for the period of service or, if that amount is not reasonably certain, the  
26 member's average rate of compensation during the twelve-month period  
27 immediately preceding the member's period of service or, if shorter, the period of  
28 employment immediately preceding that period; times the member's months of  
29 credit being purchased. For credit before July 1, 1966, no contribution is required.

30 **SECTION 10. AMENDMENT.** Section 54-52-28 of the North Dakota Century Code is  
31 amended and reenacted as follows:



1           **54-52-28. Internal Revenue Code compliance.** The board shall administer the plan in  
2 compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of  
3 the Internal Revenue Code in effect on August 1, 2005, as it applies for governmental plans.

4           **SECTION 11. AMENDMENT.** Subsection 3 of section 54-52.6-01 of the North Dakota  
5 Century Code is amended and reenacted as follows:

- 6           3. "Eligible employee" means a permanent state employee, except an employee of  
7 the judicial branch or an employee of the board of higher education and state  
8 institutions under the jurisdiction of the board, who is eighteen years or more of  
9 age and who is in a position not classified by North Dakota human resource  
10 management services. If a participating member loses permanent employee  
11 status and becomes a temporary employee, the member may still participate in the  
12 defined contribution retirement plan.

13           **SECTION 12.** A new subsection to section 54-52.6-02 of the North Dakota Century  
14 Code is created and enacted as follows:

15           A participating member who becomes a temporary employee may still participate  
16 in the defined contribution retirement plan upon filing an election with the board  
17 within one hundred eighty days of transferring to temporary employee status. The  
18 participating member may not become a member of the defined benefit plan as a  
19 temporary employee. The temporary employee electing to participate in the  
20 defined contribution retirement plan shall pay monthly to the fund an amount equal  
21 to eight and twelve-hundredths percent times the temporary employee's present  
22 monthly salary. The temporary employee shall also pay the required monthly  
23 contribution to the retiree health benefit fund established under section  
24 54-52.1-03.2. This contribution must be recorded as a member contribution  
25 pursuant to section 54-52.1-03.2. An employer may not pay the temporary  
26 employee's contributions. A temporary employee may continue to participate as a  
27 temporary employee until termination of employment or reclassification of the  
28 temporary employee as a permanent employee.

29           **SECTION 13. AMENDMENT.** Section 54-52.6-09.3 of the North Dakota Century Code  
30 is amended and reenacted as follows:

1           **54-52.6-09.3. Contributions for military service.** A participating member, or a  
2 member not presently under covered employment, may request credit and contributions for  
3 qualified military service pursuant to the Uniformed Services Employment and Reemployment  
4 Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall  
5 submit a qualified application with proof of eligible military service to the board in order to  
6 receive credit for military service. For credit on and after July 1, 1966, the ~~member must pay~~  
7 employer must elect whether it will pay the employees' contributions under this section or  
8 require its employees to pay those contributions. In the absence of an election, the pickup  
9 methodology used by the employer pursuant to subsection 3 of section 54-52-05 at the time the  
10 employee began eligible military service controls. If the employer has elected to pay the  
11 employee contribution, the employer also has the option to purchase qualified military service  
12 credit for employees who were on leave for active service prior to August 1, 2005. The  
13 employee contribution to be paid equals four percent times the salary the member would have  
14 received but for the period of service or, if that amount is not reasonably certain, the member's  
15 average rate of compensation during the twelve-month period immediately preceding the  
16 member's period of service or, if shorter, the period of employment immediately preceding such  
17 period; times the number of months for which the member is making contributions. If the  
18 ~~member makes the above payment~~ employee contribution is paid, the governmental unit; or, in  
19 the case of a member not under covered employment, the last employing governmental unit,  
20 shall pay four and twelve-hundredths percent times the salary the member would have received  
21 but for the period of service or, if that amount is not reasonably certain, the member's average  
22 rate of compensation during the twelve-month period immediately preceding the member's  
23 period of service or, if shorter, the period of employment immediately preceding such period;  
24 times the number of months for which the member made contributions. In addition, the  
25 governmental unit; or, in the case of a member not under covered employment, the last  
26 employing governmental unit, shall pay to the retiree health benefits fund established under  
27 section 54-52.1-03.2 ~~one percent~~ the percentage required by section 54-52.1-03.2 times the  
28 salary the member would have received but for the period of service or, if that amount is not  
29 reasonably certain, the member's average rate of compensation during the twelve-month period  
30 immediately preceding the member's period of service or, if shorter, the period of employment

1 immediately preceding that period; times the member's months for which the member made  
2 contributions. For credit before July 1, 1966, no contribution is required.

3 **SECTION 14. AMENDMENT.** Section 54-52.6-13 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **54-52.6-13. Distributions.**

- 6 1. A participating member is eligible to receive distribution of that person's  
7 accumulated balance in the plan upon becoming a former participating member.
  - 8 2. Upon the death of a participating member or former participating member, the  
9 accumulated balance of that deceased participant is considered to belong to the  
10 refund beneficiary, if any, of that deceased participant. If a valid nomination of  
11 refund beneficiary is not on file with the board, the board, in a lump sum  
12 distribution, shall distribute the accumulated balance to a legal representative, if  
13 any, of the deceased participant or, if there is no legal representative, to the  
14 deceased participant's estate.
  - 15 3. A former participating member ~~or refund beneficiary~~ may elect one or a  
16 combination of several of the following methods of distribution of the accumulated  
17 balance:
    - 18 a. A lump sum distribution to the recipient.
    - 19 b. A lump sum direct rollover to another qualified plan, to the extent allowed by  
20 federal law.
    - 21 c. Periodic distributions, as authorized by the board.
    - 22 d. No current distribution, in which case the accumulated balance must remain in  
23 the plan until the former participating member or refund beneficiary elects a  
24 method or methods of distribution under this section, to the extent allowed by  
25 federal law.
- 26 A surviving spouse beneficiary may elect one or a combination of several of the  
27 methods of distribution provided in subdivisions a, b, or c. A beneficiary who is not  
28 the surviving spouse may only choose a lump sum distribution of the accumulated  
29 balance.
- 30 4. If the former participating member's vested account balance is less than five  
31 thousand dollars, the board shall automatically refund the member's vested

1                   account balance upon termination of employment. The member may waive the  
2                   refund if the member submits a written statement to the board, within one hundred  
3                   twenty days after termination, requesting that the member's vested account  
4                   balance remain in the plan.

5                   **SECTION 15. REPEAL.** Section 54-52-19.2 of the North Dakota Century Code is  
6   repealed.