

Sixtieth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2166**

Introduced by

Senators Holmberg, Hacker, Heitkamp, Lindaas

Representatives Dietrich, Owens

1 A BILL for an Act to amend and reenact subsection 22 of section 54-52-01, subsection 3 of  
2 section 54-52-05, subsection 8 of section 54-52.6-01, and subsection 3 of section 54-52.6-09 of  
3 the North Dakota Century Code, relating to the definition of wages and salaries and employer  
4 contributions for employees of the North Dakota mill and elevator association under the public  
5 employees retirement system; and to provide an appropriation.

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

7 **SECTION 1. AMENDMENT.** Subsection 22 of section 54-52-01 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 22. "Wages" and "salaries" means the member's earnings in eligible employment  
10 under this chapter reported as salary on the member's federal income tax  
11 withholding statements, including payments for overtime earned by employees of  
12 the North Dakota mill and elevator association, plus any salary reduction or salary  
13 deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary"  
14 does not include fringe benefits such as payments for unused sick leave, personal  
15 leave, vacation leave paid in a lump sum, overtime other than payments for  
16 overtime earned by employees of the North Dakota mill and elevator association,  
17 housing allowances, transportation expenses, early retirement incentive pay,  
18 severance pay, medical insurance, workforce safety and insurance benefits,  
19 disability insurance premiums or benefits, or salary received by a member in lieu of  
20 previously employer-provided fringe benefits under an agreement between the  
21 member and participating employer. Overtime earned by employees of the North  
22 Dakota mill and elevator association must be reported and annualized pursuant to  
23 rules adopted by the board. Bonuses may be considered as salary under this  
24 section if reported and annualized pursuant to rules adopted by the board.

1           **SECTION 2. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota  
2 Century Code is amended and reenacted as follows:

- 3           3. ~~Each~~ Except for payments for overtime earned by employees of the North Dakota  
4 mill and elevator association, each employer, at its option, may pay all or a portion  
5 of the employee contributions required by subsection 2 and sections 54-52-06.1,  
6 54-52-06.2, and 54-52-06.3 or the employee contributions required to purchase  
7 service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4.  
8 Employees may not receive the contributed amounts directly once the employer  
9 has elected to pay the employee contributions. The amount paid must be paid by  
10 the employer in lieu of contributions by the employee. If the state determines not  
11 to pay the contributions, the amount that would have been paid must continue to  
12 be deducted from the employee's compensation. If contributions are paid by the  
13 employer, they must be treated as employer contributions in determining tax  
14 treatment under this code and the federal Internal Revenue Code. If contributions  
15 are paid by the employer, they may not be included as gross income of the  
16 employee in determining tax treatment under this code and the Internal Revenue  
17 Code until they are distributed or made available. The employer shall pay these  
18 employee contributions from the same source of funds used in paying  
19 compensation to the employee or from the levy authorized by subsection 5 of  
20 section 57-15-28.1. The employer shall pay these contributions by effecting an  
21 equal cash reduction in the gross salary of the employee or by an offset against  
22 future salary increases or by a contribution of a reduction in gross salary and offset  
23 against future salary increases. If employee contributions are paid by the  
24 employer, they must be treated for the purposes of this chapter in the same  
25 manner and to the same extent as employee contributions made prior to the date  
26 on which employee contributions were assumed by the employer. An employer  
27 exercising its option under this subsection shall report its choice to the board in  
28 writing.

29           **SECTION 3. AMENDMENT.** Subsection 8 of section 54-52.6-01 of the North Dakota  
30 Century Code is amended and reenacted as follows:

1           8. "Wages" and "salaries" means earnings in eligible employment under this chapter  
2           reported as salary on a federal income tax withholding statement, including  
3           payments for overtime earned by employees of the North Dakota mill and elevator  
4           association, plus any salary reduction or salary deferral amounts under 26 U.S.C.  
5           125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such  
6           as payments for unused sick leave, personal leave, vacation leave paid in a lump  
7           sum, overtime other than payments for overtime earned by employees of the North  
8           Dakota mill and elevator association, housing allowances, transportation expenses,  
9           early retirement, incentive pay, severance pay, medical insurance, workforce  
10          safety and insurance benefits, disability insurance premiums or benefits, or salary  
11          received by a member in lieu of previously employer-provided fringe benefits under  
12          an agreement between an employee and a participating employer. Bonuses may  
13          be considered as salary under this section if reported and annualized pursuant to  
14          rules adopted by the board.

15          **SECTION 4. AMENDMENT.** Subsection 3 of section 54-52.6-09 of the North Dakota  
16 Century Code is amended and reenacted as follows:

17          3. ~~Each~~ Except for payments for overtime earned by employees of the North Dakota  
18          mill and elevator association, each employer, at its option, may pay the employee  
19          contributions required by this section for all compensation earned after  
20          December 31, 1999. The amount paid must be paid by the employer in lieu of  
21          contributions by the employee. If the employer decides not to pay the  
22          contributions, the amount that would have been paid will continue to be deducted  
23          from the employee's compensation. If contributions are paid by the employer, they  
24          must be treated as employer contributions in determining tax treatment under this  
25          code and the federal Internal Revenue Code. Contributions paid by the employer  
26          may not be included as gross income of the employee in determining tax treatment  
27          under this code and the federal Internal Revenue Code until they are distributed or  
28          made available. The employer shall pay these employee contributions from the  
29          same source of funds used in paying compensation to the employee. The  
30          employer shall pay these contributions by effecting an equal cash reduction in the  
31          gross salary of the employee or by an offset against future salary increases or by a

1 combination of a reduction in gross salary and offset against future salary  
2 increases. Employee contributions paid by the employer must be treated for the  
3 purposes of this chapter in the same manner and to the same extent as employee  
4 contributions made before the date on which employee contributions were  
5 assumed by the employer. An employer shall exercise its option under this  
6 subsection by December 1, 1999, and shall report its choice to the board in writing.  
7 The option chosen may not be revoked for the remainder of the biennium.  
8 Thereafter, the option choice must be forwarded to the board, in writing, by June  
9 fifteenth of each odd-numbered year.

10 **SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the public  
11 employees retirement fund, not otherwise appropriated, the sum of \$8,000, or so much of the  
12 sum as may be necessary, to the public employees retirement system board for the purpose of  
13 defraying the expenses of administering this Act, for the biennium beginning July 1, 2007, and  
14 ending June 30, 2009. There is appropriated out of any moneys in the mill and elevator fund,  
15 not otherwise appropriated, the sum of \$205,000, or so much of the sum as may be necessary,  
16 to the North Dakota mill and elevator association for the purpose of paying the retirement  
17 contributions required by this Act, for the biennium beginning July 1, 2007, and ending June 30,  
18 2009.