

Introduced by

(At the request of the Public Employees Retirement System Board)

1 A BILL for an Act to create and enact a new subsection to section 39-03.1-09 and a new  
2 subsection to section 54-52-05 of the North Dakota Century Code, relating to payment of  
3 employee contributions under the highway patrolmen's retirement plan and the public  
4 employees retirement system; and to amend and reenact sections 21-10-01(1), 39-03.1-08.2,  
5 39-03.1-11(8) and (9), 39-03.1-11.2, 54-52-03(4), 54-52-17(6), (8), and (9), 54-52-17.4(6),  
6 54-52-28, 54-52.1-03(7), and 54-52.1-03.4 of the North Dakota Century Code, relating to  
7 membership of the state investment board, purchase of service credit, member benefit options,  
8 Internal Revenue Code compliance, and board elections under the highway patrolmen's  
9 retirement plan and the public employees retirement system, and participation and employer  
10 payments under the uniform group insurance program.

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

12 **SECTION 1. AMENDMENT.** Section 21-10-01(1) is amended:

13 1. The North Dakota state investment board consists of the governor, the state  
14 treasurer, the commissioner of university and school lands, the director of  
15 workforce safety and insurance, the insurance commissioner, three members of  
16 the teachers' fund for retirement board or the board's designees who need not be  
17 members of the fund as selected by that board, ~~and three~~ two of the elected  
18 members of the public employees retirement system board as selected by that  
19 board, and one member of the public employees retirement system board as  
20 selected by that board. The director of workforce safety and insurance may  
21 appoint a designee, subject to approval by the workforce safety and insurance  
22 board of directors, to attend the meetings, participate, and vote when the director is  
23 unable to attend. The teachers' fund for retirement board may appoint an alternate  
24 designee with full voting privileges to attend meetings of the state investment board

1 when a selected member is unable to attend. The public employees retirement  
2 system board may appoint an alternate designee with full voting privileges from the  
3 public employees retirement system board to attend meetings of the state  
4 investment board when a selected member is unable to attend. The members of  
5 the state investment board, except elected and appointed officials and the director  
6 of workforce safety and insurance or the director's designee, are entitled to receive  
7 as compensation sixty-two dollars and fifty cents per day and necessary mileage  
8 and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending  
9 meetings of the state investment board.

10 **SECTION 2. AMENDMENT.** Section 39-03.1-08.2 is amended:

11 **39-03.1-08.2. Purchase of additional service credit.**

- 12 1. The fund may accept rollovers from other eligible plans under rules adopted by the  
13 board for the purchase of additional service credit, but only to the extent the  
14 transfer is a rollover contribution that meets the requirement of section 408 of the  
15 Internal Revenue Code [26 U.S.C. 408].
- 16 2. ~~Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled~~  
17 ~~to purchase additional credit under this section for active employment in the armed~~  
18 ~~forces of the United States, for up to four years of credit, if the contributor is not~~  
19 ~~presently receiving credit for that service. A contributor may not purchase credit~~  
20 ~~under this subsection if the years claimed also qualify for retirement benefits from~~  
21 ~~another retirement system.~~
- 22 3. ~~A contributor may elect to purchase credit for an employer approved leave of~~  
23 ~~absence if the contributor is not presently receiving credit for that absence.~~
- 24 4. The board may accept trustee-to-trustee transfers as permitted by Internal  
25 Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal  
26 Revenue Code section 403(b) annuity or Internal Revenue Code section 457  
27 deferred compensation plan for the purchase of permissive service credit, as  
28 defined in Internal Revenue Code section 415(n)(3)(A), or as repayment of a  
29 cashout from a governmental plan under Internal Revenue Code section 415(k)(3).
- 30 3. A contributor may elect to purchase credit for years of service and prior service for  
31 which the contributor is not presently receiving credit. A contributor is entitled to

- 1           purchase additional credit under this section for the following service or prior  
2           service, except this service is not eligible for credit if the years claimed also qualify  
3           for retirement benefits from another retirement system:
- 4           a.   Except as provided in subsection 3 of section 39-03.1-10.1, up to four years of  
5           credit for active employment in the armed forces of the United States.
- 6           b.   Employment as a permanent employee by a public employer either within or  
7           outside the state.
- 8           c.   Employment as a permanent employee by the federal government.
- 9           4.   A contributor may elect to purchase credit for the following absences for which the  
10           participating contributor is not receiving service credit:
- 11           a.   Employer-approved leave of absence; and
- 12           b.   Months away from work while participating as a seasonal employee.
- 13           5.   The contributor may purchase credit under this section by paying to the board an  
14           amount equal to the actuarial cost to the fund of providing the credit. The board  
15           shall adopt rules governing the purchase of additional credit under this section.
- 16           6.   The board may establish individual retirement accounts and individual retirement  
17           annuities as permitted under section 408(q) of the Internal Revenue Code to allow  
18           employees to make voluntary employee contributions. The board may adopt  
19           appropriate rules as may be necessary to implement and administer the accounts  
20           and annuities under this section.
- 21           7.   In addition to service credit identified in this section, a contributor may purchase up  
22           to ~~five~~ ten years of service credit unrelated to any other eligible service. Up to a  
23           maximum of five years of purchased service credit under this subsection will be  
24           recognized as service credit for the purpose of computing retirement dates under  
25           section 39-03.1-11.
- 26           8.   Pursuant to rules adopted by the board, the board may allow a contributor to  
27           purchase service credit with either pretax or aftertax moneys, at the board's  
28           discretion. If a contributor elects to purchase service credit using pretax moneys,  
29           the requirements and restrictions in subsection 2 of section 39-03.1-09 apply to the  
30           purchase arrangement.

31           **SECTION 3.** A new subsection to section 39-03.1-09 is created:

1           For compensation earned after August 1, 2009, all employee contributions required  
2           under subsection 1, and not otherwise paid under subsection 2, must be paid by  
3           the state in lieu of contributions by the member. All contributions paid by the state  
4           under this subsection must be treated as employer contributions in determining tax  
5           treatment under this code and the federal Internal Revenue Code. Contributions  
6           paid by the state under this subsection may not be included as gross income of the  
7           member in determining tax treatment under this code and the Internal Revenue  
8           Code until the contributions are distributed or made available. Contributions paid  
9           by the state in accordance with this subsection must be treated for the purposes of  
10           this chapter in the same manner and to the same extent as member contributions  
11           made before the date the contributions were assumed by the state. The state shall  
12           pay these member contributions from the same source of funds used in paying  
13           compensation to the members. The state shall pay these contributions by effecting  
14           an equal cash reduction in the gross salary of the employee. The state shall  
15           continue making payments under this section unless otherwise specifically  
16           provided for under the agency's biennial appropriation or by law.

17           **SECTION 4. AMENDMENT.** Section 39-03.1-11(8) and (9) is amended:

- 18           8. The surviving spouse of a member receiving retirement benefits must be the  
19           member's primary beneficiary unless there is no surviving spouse or the surviving  
20           spouse ~~designates~~ consents to the member's designation of an alternate  
21           beneficiary in writing. If a contributor receiving retirement benefits, or a  
22           contributor's surviving spouse receiving retirement benefits, dies before the total  
23           amount of benefits paid to them equals the amount of the contributor's  
24           accumulated deductions at retirement, the difference must be paid to the named  
25           beneficiary of the recipient or, if there is no named beneficiary, to the recipient's  
26           estate.
- 27           9. The board shall adopt rules providing for the receipt of retirement benefits in the  
28           following optional forms:
- 29           a. An actuarially equivalent joint and survivor one hundred percent option. A  
30           member may designate a subsequent beneficiary upon the death of the  
31           original beneficiary or upon a divorce from a spouse beneficiary. If the

1                   member elects to choose a nonspouse beneficiary, subject to any limitation  
2                   under subsection 8, the nonspouse beneficiary must have a date of birth  
3                   within ten years of the member's date of birth. An election made under this  
4                   subdivision is limited to one beneficiary, unless a member is authorized to  
5                   choose a subsequent beneficiary under this subdivision.

6                   b. An actuarially equivalent life with ten-year or twenty-year certain options.

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

9                   d. An actuarial equivalent graduated benefit option with either a one percent or  
10                   two percent increase.

11                   Unless a contributor requests that the contributor receive benefits according to one  
12                   of these options at the time of applying for retirement, all retirement benefits must  
13                   be in the form of a lifetime monthly pension, with a fifty percent option to the  
14                   surviving spouse.

15                   **SECTION 5. AMENDMENT.** Section 39-03.1-11.2 is amended:

16                   **39-03.1-11.2. Internal Revenue Code compliance.**

17                   1. The board shall administer the plan in compliance with section 415, section  
18                   401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code  
19                   in effect on August 1, ~~2007~~ 2009, as it applies for governmental plans.

20                   2. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal  
21                   Revenue Code, as approved by the legislative assembly, must be adjusted under  
22                   section 415(d) of the Internal Revenue Code, effective January first of each year  
23                   following a regular legislative session. The adjustment of the defined benefit dollar  
24                   limitation under section 415(d) applies to participating members who have had a  
25                   separation from employment, but that member's benefit payments may not reflect  
26                   the adjusted limit prior to January first of the calendar year in which the adjustment  
27                   applies.

28                   3. If a participating member's benefit is increased by plan amendment after the  
29                   commencement of benefit payments, the member's annual benefit may not exceed  
30                   the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal

1           Revenue Code, as adjusted under section 415(d) for the calendar year in which the  
2           increased benefit is payable.

3           4. If a participating member is, or ever has been, a participant in another defined  
4           benefit plan maintained by the employer, the sum of the participant's annual  
5           benefits from all the plans may not exceed the defined benefit dollar limitation  
6           under section 415(b)(1)(A) of the Internal Revenue Code. If the participating  
7           member's employer-provided benefits under all such defined benefit plans would  
8           exceed the defined benefit dollar limitation, the benefit must be reduced to comply  
9           with section 415 of the Internal Revenue Code. This reduction must be made  
10           pro rata between the plans, in proportion to the participating member's service in  
11           each plan.

12           **SECTION 6. AMENDMENT.** Section 54-52-03(4) is amended:

13           4. Three board members must be elected by and from among the active participating  
14           members, members of the retirement plan established under chapter 54-52.6,  
15           members of the retirement plan established under chapter 39-03.1, and members  
16           of the job service North Dakota retirement plan. Employees who have terminated  
17           their employment for whatever reason are not eligible to serve as elected members  
18           of the board under this subsection. Board members must be elected to a five-year  
19           term pursuant to an election called by the board. Notice of board elections must be  
20           given to all active participating members. The time spent in performing duties as a  
21           board member may not be charged against any employee's accumulated annual or  
22           any other type of leave.

23           **SECTION 7.** A new subsection to section 54-52-05 is created:

24           For compensation earned after August 1, 2009, all employee contributions required  
25           under section 54-52-06.1 and the job service North Dakota retirement plan, and not  
26           otherwise paid under subsection 3, must be paid by the employer in lieu of  
27           contributions by the member. All contributions paid by the employer under this  
28           subsection must be treated as employer contributions in determining tax treatment  
29           under this code and the Internal Revenue Code. Contributions paid by the  
30           employer under this subsection may not be included as gross income of the  
31           member in determining tax treatment under this code and the Internal Revenue

1           Code until the contributions are distributed or made available. Contributions paid  
2           by the employer in accordance with this subsection must be treated for the  
3           purposes of this chapter in the same manner and to the same extent as member  
4           contributions made before the date the contributions were assumed by the  
5           employer. The employer shall pay these member contributions from the same  
6           source of funds used in paying compensation to the employee. The employer shall  
7           pay these contributions by effecting an equal cash reduction in the gross salary of  
8           the employee. The employer shall continue making payments under this section  
9           unless otherwise specifically provided for under the agency's biennial appropriation  
10           or by amendment to law.

11           **SECTION 8. AMENDMENT.** Section 54-52-17(6), (8), and (9) is amended:

- 12           6. If before retiring a member dies after completing three years of eligible  
13           employment, except for supreme and district court judges, who must have  
14           completed five years of eligible employment, the board shall pay the member's  
15           account balance to the member's designated beneficiary as provided in this  
16           subsection. If the member has designated an alternate beneficiary with the  
17           surviving spouse's written consent, the board shall pay the member's account  
18           balance to the named beneficiary. If the member has named more than one  
19           primary beneficiary, the board shall pay the member's account balance to the  
20           named primary beneficiaries in the percentages designated by the member or, if  
21           the member has not designated a percentage for the beneficiaries, in equal  
22           percentages. If one or more of the primary beneficiaries has predeceased the  
23           member, the board shall pay the predeceased beneficiary's share to the remaining  
24           primary beneficiaries. If there are no remaining primary beneficiaries, the board  
25           shall pay the member's account balance to the contingent beneficiaries in the  
26           same manner. If there are no remaining designated beneficiaries, the board shall  
27           pay the member's account balance to the member's estate. If the member has not  
28           designated an alternate beneficiary or the surviving spouse is the beneficiary, the  
29           surviving spouse of the member may select a form of payment as follows:
- 30           a. If the member was a supreme or district court judge, the surviving spouse  
31           may select one of the following optional forms of payment:

- 1                   (1) A lump sum payment of the member's retirement account as of the date  
2                   of death.
- 3                   (2) Payments as calculated for the deceased member as if the member  
4                   was of normal retirement age at the date of death, payable until the  
5                   spouse dies.
- 6                   b. The surviving spouse of all other members may select one of the following  
7                   options:
- 8                   (1) A lump sum payment of the member's retirement account as of the date  
9                   of death.
- 10                  (2) ~~Payments for sixty months as calculated for the deceased member as if~~  
11                  ~~the member was of normal retirement age at the date of death.~~
- 12                  (3) Payment of a monthly retirement benefit equal to fifty percent of the  
13                  deceased member's accrued single life retirement benefits until the  
14                  spouse dies.
- 15                  (4) (3) If the member dies on or after the member's normal retirement date, the  
16                  payment of a monthly retirement benefit equal to an amount that would  
17                  have been paid to the surviving spouse if the member had retired on  
18                  the day of the member's death and had selected a one hundred percent  
19                  joint and survivor annuity, payable until the spouse dies. A surviving  
20                  spouse who received a benefit under this subsection as of July 31,  
21                  1995, is entitled to the higher of that person's existing benefit or the  
22                  equivalent of the accrued benefit available under the one hundred  
23                  percent joint and survivor provision as if the deceased member were of  
24                  normal retirement age, with the increase payable beginning August 1,  
25                  1995.
- 26                  8. The surviving spouse of a member receiving retirement benefits must be the  
27                  member's primary beneficiary unless there is no surviving spouse or the surviving  
28                  spouse ~~designates~~ consents to the member's designation of an alternate  
29                  beneficiary in writing. If a member receiving retirement benefits or the member's  
30                  surviving spouse receiving retirement benefits dies before the total amount of  
31                  benefits paid to either or both equals the amount of the member's account balance



1 at retirement, the difference must be paid to the named beneficiary of the recipient  
2 or, if there is no named beneficiary, to the recipient's estate.

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

5 a. Single life.

6 b. An actuarially equivalent joint and survivor option, with fifty percent or one  
7 hundred percent options. A member may designate a subsequent beneficiary  
8 upon the death of the original beneficiary or upon a divorce from a spouse  
9 beneficiary. If the member elects to choose a nonspouse beneficiary, subject  
10 to any limitation under subsection 8, the nonspouse beneficiary must have a  
11 date of birth within ten years of the member's date of birth. An election made  
12 under this subdivision is limited to one beneficiary, unless a member is  
13 authorized to choose a subsequent beneficiary under this subdivision.

14 c. An actuarially equivalent level social security option, which is available only to  
15 members who retire prior to attaining the age at which they may begin to  
16 receive unreduced social security benefits.

17 d. Actuarially equivalent life with ten-year or twenty-year certain options.

18 e. An actuarially equivalent partial lump sum distribution option with a  
19 twelve-month maximum lump sum distribution.

20 f. An actuarial equivalent graduated benefit option with either a one percent or  
21 two percent increase.

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

30 **SECTION 9. AMENDMENT.** Section 54-52-17.4(6) is amended:

1           6. In addition to service credit identified in this section, a vested participating member  
2           may purchase up to ~~five~~ ten years of service credit unrelated to any other eligible  
3           service. Up to a maximum of five years of purchased service credit under this  
4           subsection must be recognized as service credit for the purpose of computing  
5           retirement dates under section 54-52-17.

6           **SECTION 10. AMENDMENT.** Section 54-52-28 is amended:

7           **54-52-28. Internal Revenue Code compliance.**

- 8           1. The board shall administer the plan in compliance with section 415, section  
9           401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code  
10          in effect on August 1, ~~2007~~ 2009, as it applies for governmental plans.
- 11          2. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal  
12          Revenue Code, as approved by the legislative assembly, must be adjusted under  
13          section 415(d) of the Internal Revenue Code, effective January first of each year  
14          following a regular legislative session. The adjustment of the defined benefit dollar  
15          limitation under section 415(d) applies to participating members who have had a  
16          separation from employment, but that member's benefit payments may not reflect  
17          the adjusted limit prior to January first of the calendar year in which the adjustment  
18          applies.
- 19          3. If a participating member's benefit is increased by plan amendment after the  
20          commencement of benefit payments, the member's annual benefit may not exceed  
21          the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal  
22          Revenue Code, as adjusted under section 415(d) for the calendar year in which the  
23          increased benefit is payable.
- 24          4. If a participating member is, or ever has been, a participant in another defined  
25          benefit plan maintained by the employer, the sum of the participant's annual  
26          benefits from all the plans may not exceed the defined benefit dollar limitation  
27          under section 415(b)(1)(A) of the Internal Revenue Code. If the participating  
28          member's employer-provided benefits under all such defined benefit plans would  
29          exceed the defined benefit dollar limitation, the benefit must be reduced to comply  
30          with section 415 of the Internal Revenue Code. The reduction must be made

1           pro rata between the plans, in proportion to the participating member's service in  
2           each plan.

3           **SECTION 11. AMENDMENT.** Section 54-52.1-03(7) is amended:

4           7. If the participating employee is a ~~teacher~~ faculty member in a state charitable,  
5           penal, or educational institution who receives a salary or wages on a ~~nine-month~~  
6           less than a twelve-month basis and has signed a contract to teach for the next  
7           ensuing school year, the agency shall make arrangements to include that  
8           employee in the insurance program on a twelve-month basis and make the  
9           contribution authorized by this section for each month of the twelve-month period.

10          **SECTION 12. AMENDMENT.** Section 54-52.1-03.4 is amended:

11          **54-52.1-03.4. ~~Participation by employees of certain political subdivisions and~~**  
12 **~~temporary~~ Temporary employees and employees on unpaid leave of absence. An**  
13 **~~employee of a county, city, school district, district health unit, or park district that is not~~**  
14 **~~participating in the uniform group insurance program pursuant to section 54-52.1-03.1 and is~~**  
15 **~~not eligible for any other employee group health plan may elect to participate in the uniform~~**  
16 **~~group insurance program by completing the necessary enrollment forms and qualifying under~~**  
17 **~~the medical underwriting requirements established by the board. The board may use~~**  
18 **~~risk-adjusted premiums for individual insurance contracts to implement the provisions of this~~**  
19 **~~section allowing employees of a county, city, school district, district health unit, or park district to~~**  
20 **~~participate in the uniform group insurance program. The county, city, school district, district~~**  
21 **~~health unit, or park district employee participating in the uniform group insurance program under~~**  
22 **~~this section shall pay monthly to the board the premiums in effect for the coverage being~~**  
23 **~~provided.~~ A temporary employee employed before August 1, 2007, may elect to participate in**  
24 **the uniform group insurance program by completing the necessary enrollment forms and**  
25 **qualifying under the medical underwriting requirements of the program. A temporary employee**  
26 **employed on or after August 1, 2007, is only eligible to participate in the uniform group**  
27 **insurance program if the employee is employed at least twenty hours per week and at least**  
28 **twenty weeks each year of employment. The temporary employee or the temporary**  
29 **employee's employer shall pay monthly to the board the premiums in effect for the coverage**  
30 **being provided. An employer may pay health or life insurance premiums for a permanent**

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- 1 employee on an unpaid leave of absence. A political subdivision, department, board, or agency
- 2 may make a contribution for coverage under this section.