

Sixty-first  
Legislative Assembly  
of North Dakota

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, a new  
2 subdivision to subsection 9 of section 39-03.1-11, a new subsection to section 54-52-05, and a  
3 new subdivision to subsection 9 of section 54-52-17 of the North Dakota Century Code, relating  
4 to payment of employee contributions and retirement benefits under the highway patrolmen's  
5 retirement plan and the public employees retirement system; to amend and reenact  
6 subsection 1 of section 21-10-01, section 39-03.1-08.2, subdivision a of subsection 1 of section  
7 39-03.1-10.1, subsections 8 and 9 of section 39-03.1-11, section 39-03.1-11.2, subsection 4 of  
8 section 54-52-03, subsections 6, 7, 8, and 9 of section 54-52-17, subsection 6 of section  
9 54-52-17.4, section 54-52-28, subsection 7 of section 54-52.1-03, and section 54-52.1-03.4 of  
10 the North Dakota Century Code, relating to membership of the state investment board,  
11 purchase of service credit, member benefit options, member refunds, Internal Revenue Code  
12 compliance, and board elections under the highway patrolmen's retirement plan and the public  
13 employees retirement system, and participation and employer payments under the uniform  
14 group insurance program; and to provide an effective date.

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

16 **SECTION 1. AMENDMENT.** Subsection 1 of section 21-10-01 of the North Dakota  
17 Century Code is amended and reenacted as follows:

- 18 1. The North Dakota state investment board consists of the governor, the state  
19 treasurer, the commissioner of university and school lands, the director of  
20 workforce safety and insurance, the insurance commissioner, three members of  
21 the teachers' fund for retirement board or the board's designees who need not be  
22 members of the fund as selected by that board, ~~and three~~ two of the elected  
23 members of the public employees retirement system board as selected by that  
24 board, and one member of the public employees retirement system board as

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

15       **SECTION 2. AMENDMENT.** Section 39-03.1-08.2 of the North Dakota Century Code  
16       is amended and reenacted as follows:

17       **39-03.1-08.2. Purchase of additional service credit.**

- 18       1. The fund may accept rollovers from other eligible plans under rules adopted by the  
19       board for the purchase of additional service credit, but only to the extent the  
20       transfer is a rollover contribution that meets the requirement of section 408 of the  
21       Internal Revenue Code [26 U.S.C. 408].
- 22       2. ~~Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled~~  
23       ~~to purchase additional credit under this section for active employment in the armed~~  
24       ~~forces of the United States, for up to four years of credit, if the contributor is not~~  
25       ~~presently receiving credit for that service. A contributor may not purchase credit~~  
26       ~~under this subsection if the years claimed also qualify for retirement benefits from~~  
27       ~~another retirement system.~~
- 28       3. ~~A contributor may elect to purchase credit for an employer approved leave of~~  
29       ~~absence if the contributor is not presently receiving credit for that absence.~~
- 30       4. The board may accept trustee-to-trustee transfers as permitted by Internal  
31       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).

3. A contributor may elect to purchase credit for years of service and prior service for which the contributor is not presently receiving credit. A contributor 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. Except as provided in subsection 3 of section 39-03.1-10.1, up to four years of credit for active employment in the armed forces of the United States.
- b. Employment as a permanent employee by a public employer either within or outside the state.
- c. Employment as a permanent employee by the federal government.

4. A contributor may elect to purchase credit for the following absences for which the participating contributor is not receiving service credit:

- a. Employer-approved leave of absence; and
- b. Months away from work while participating as a seasonal employee.

5. The contributor may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. The board shall adopt rules governing the purchase of additional credit under this section.

6. 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 appropriate rules as may be necessary to implement and administer the accounts and annuities under this section.

7. In addition to service credit identified in this section, a contributor may purchase up to ~~five~~ ten years of service credit unrelated to any other eligible service. Up to a maximum of five years of purchased service credit under this subsection will be recognized as service credit for the purpose of computing retirement dates under section 39-03.1-11.

8. Pursuant to rules adopted by the board, the board may allow a contributor to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If a contributor elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 2 of section 39-03.1-09 apply to the purchase arrangement.

**SECTION 3.** A new subsection to section 39-03.1-09 of the North Dakota Century Code is created and enacted as follows:

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

**SECTION 4. AMENDMENT.** Subdivision a of subsection 1 of section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. If the contributor has less than ten years of service at termination of employment, the refund is payable either on application of the contributor or; is automatically payable if within thirty days after termination the contributor has not provided a written statement to the board waiving the refund and requesting the contributor's account remain in the fund, ~~automatically~~ and the contributor has an account balance of less than one thousand dollars.

1           **SECTION 5. AMENDMENT.** Subsections 8 and 9 of section 39-03.1-11 of the North  
2 Dakota Century Code are amended and reenacted as follows:

3           8. The surviving spouse of a member receiving retirement benefits must be the  
4 member's primary beneficiary unless there is no surviving spouse or the surviving  
5 spouse ~~designates~~ consents to the member's designation of an alternate  
6 beneficiary in writing. If a contributor receiving retirement benefits, or a  
7 contributor's surviving spouse receiving retirement benefits, dies before the total  
8 amount of benefits paid to them equals the amount of the contributor's  
9 accumulated deductions at retirement, the difference must be paid to the named  
10 beneficiary of the recipient or, if there is no named beneficiary, to the recipient's  
11 estate.

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

14          a. An actuarially equivalent joint and survivor one hundred percent option. A  
15 member may designate a subsequent beneficiary upon the death of the  
16 original beneficiary or upon a divorce from a spouse beneficiary. If the  
17 member elects to choose a nonspouse beneficiary, subject to any limitation  
18 under subsection 8, the nonspouse beneficiary must have a date of birth  
19 within ten years of the member's date of birth. An election made under this  
20 subdivision is limited to one beneficiary, unless a member is authorized to  
21 choose a subsequent beneficiary under this subdivision.

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

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

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

29           **SECTION 6.** A new subdivision to subsection 9 of section 39-03.1-11 of the North  
30 Dakota Century Code is created and enacted as follows:

1                   an actuarially equivalent graduated benefit option with either a one percent or  
2                   two percent increase to be applied the first day of January of each year.

3                   **SECTION 7. AMENDMENT.** Section 39-03.1-11.2 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5                   **39-03.1-11.2. Internal Revenue Code compliance.**

- 6                   1.   The board shall administer the plan in compliance with section 415, section  
7                   401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code  
8                   in effect on August 1, ~~2007~~ 2009, as it applies for governmental plans.
- 9                   2.   The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal  
10                  Revenue Code, as approved by the legislative assembly, must be adjusted under  
11                  section 415(d) of the Internal Revenue Code, effective January first of each year  
12                  following a regular legislative session. The adjustment of the defined benefit dollar  
13                  limitation under section 415(d) applies to participating members who have had a  
14                  separation from employment, but that member's benefit payments may not reflect  
15                  the adjusted limit prior to January first of the calendar year in which the adjustment  
16                  applies.
- 17                  3.   If a participating member's benefit is increased by plan amendment after the  
18                  commencement of benefit payments, the member's annual benefit may not exceed  
19                  the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal  
20                  Revenue Code, as adjusted under section 415(d) for the calendar year in which the  
21                  increased benefit is payable.
- 22                  4.   If a participating member is, or ever has been, a participant in another defined  
23                  benefit plan maintained by the employer, the sum of the participant's annual  
24                  benefits from all the plans may not exceed the defined benefit dollar limitation  
25                  under section 415(b)(1)(A) of the Internal Revenue Code. If the participating  
26                  member's employer-provided benefits under all such defined benefit plans would  
27                  exceed the defined benefit dollar limitation, the benefit must be reduced to comply  
28                  with section 415 of the Internal Revenue Code. This reduction must be made  
29                  pro rata between the plans, in proportion to the participating member's service in  
30                  each plan.

1           **SECTION 8. AMENDMENT.** Subsection 4 of section 54-52-03 of the North Dakota  
2 Century Code is amended and reenacted as follows:

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

13           **SECTION 9.** A new subsection to section 54-52-05 of the North Dakota Century Code  
14 is created and enacted as follows:

15           For compensation earned after August 1, 2009, all employee contributions required  
16 under section 54-52-06.1 and the job service North Dakota retirement plan, and not  
17 otherwise paid under subsection 3, must be paid by the employer in lieu of  
18 contributions by the member. All contributions paid by the employer under this  
19 subsection must be treated as employer contributions in determining tax treatment  
20 under this code and the Internal Revenue Code. Contributions paid by the  
21 employer under this subsection may not be included as gross income of the  
22 member in determining tax treatment under this code and the Internal Revenue  
23 Code until the contributions are distributed or made available. Contributions paid  
24 by the employer in accordance with this subsection must be treated for the  
25 purposes of this chapter in the same manner and to the same extent as member  
26 contributions made before the date the contributions were assumed by the  
27 employer. The employer shall pay these member contributions from the same  
28 source of funds used in paying compensation to the employee. The employer shall  
29 pay these contributions by effecting an equal cash reduction in the gross salary of  
30 the employee. The employer shall continue making payments under this section

1           unless otherwise specifically provided for under the agency's biennial appropriation  
2           or by amendment to law.

3           **SECTION 10. AMENDMENT.** Subsections 6, 7, 8, and 9 of section 54-52-17 of the  
4 North Dakota Century Code are amended and reenacted as follows:

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

- 23           a. If the member was a supreme or district court judge, the surviving spouse  
24           may select one of the following optional forms of payment:
- 25               (1) A lump sum payment of the member's retirement account as of the date  
26               of death.
- 27               (2) Payments as calculated for the deceased member as if the member  
28               was of normal retirement age at the date of death, payable until the  
29               spouse dies.
- 30           b. The surviving spouse of all other members may select one of the following  
31           options:



- 1 (1) A lump sum payment of the member's retirement account as of the date  
2 of death.
- 3 (2) ~~Payments for sixty months as calculated for the deceased member as if~~  
4 ~~the member was of normal retirement age at the date of death.~~
- 5 (3) Payment of a monthly retirement benefit equal to fifty percent of the  
6 deceased member's accrued single life retirement benefits until the  
7 spouse dies.
- 8 (4) (3) If the member dies on or after the member's normal retirement date, the  
9 payment of a monthly retirement benefit equal to an amount that would  
10 have been paid to the surviving spouse if the member had retired on  
11 the day of the member's death and had selected a one hundred percent  
12 joint and survivor annuity, payable until the spouse dies. A surviving  
13 spouse who received a benefit under this subsection as of July 31,  
14 1995, is entitled to the higher of that person's existing benefit or the  
15 equivalent of the accrued benefit available under the one hundred  
16 percent joint and survivor provision as if the deceased member were of  
17 normal retirement age, with the increase payable beginning August 1,  
18 1995.
- 19 7. If a member not coming under the provisions of subsection 6 terminates  
20 employment because of death, permanent and total disability, or any voluntary or  
21 involuntary reason prior to retirement, the member or the member's designated  
22 beneficiary is entitled to the member's account balance at termination. The board  
23 ~~shall~~ automatically shall refund a member's account balance if the member has  
24 completed less than three years of eligible employment, has an account balance of  
25 less than one thousand dollars, and was not a supreme or district court judge. If  
26 the member was a supreme or district court judge, the board ~~shall~~ automatically  
27 shall refund a member's account balance if the member completed less than five  
28 years of eligible employment. A member may waive the refund if the member  
29 submits a written statement to the board, within thirty days after termination,  
30 requesting that the member's account balance remain in the fund.

- 1           8. The surviving spouse of a member receiving retirement benefits must be the  
2           member's primary beneficiary unless there is no surviving spouse or the surviving  
3           spouse ~~designates~~ consents to the member's designation of an alternate  
4           beneficiary in writing. If a member receiving retirement benefits or the member's  
5           surviving spouse receiving retirement benefits dies before the total amount of  
6           benefits paid to either or both equals the amount of the member's account balance  
7           at retirement, the difference must be paid to the named beneficiary of the recipient  
8           or, if there is no named beneficiary, to the recipient's estate.
- 9           9. The board shall adopt rules providing for the receipt of retirement benefits in the  
10          following optional forms:
- 11          a. Single life.
- 12          b. An actuarially equivalent joint and survivor option, with fifty percent or one  
13          hundred percent options. A member may designate a subsequent beneficiary  
14          upon the death of the original beneficiary or upon a divorce from a spouse  
15          beneficiary. If the member elects to choose a nonspouse beneficiary, subject  
16          to any limitation under subsection 8, the nonspouse beneficiary must have a  
17          date of birth within ten years of the member's date of birth. An election made  
18          under this subdivision is limited to one beneficiary, unless a member is  
19          authorized to choose a subsequent beneficiary under this subdivision.
- 20          c. An actuarially equivalent level social security option, which is available only to  
21          members who retire prior to attaining the age at which they may begin to  
22          receive unreduced social security benefits.
- 23          d. Actuarially equivalent life with ten-year or twenty-year certain options.
- 24          e. An actuarially equivalent partial lump sum distribution option with a  
25          twelve-month maximum lump sum distribution.

26          Except for supreme and district court judges, unless a member specifically  
27          requests that the member receive benefits according to one of these options at the  
28          time of applying for retirement, all retirement benefits must be in the form of a  
29          single life benefit. For supreme and district court judges, unless a member  
30          specifically requests that the member receive benefits according to one of these  
31          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.

**SECTION 11.** A new subdivision to subsection 9 of section 54-52-17 of the North Dakota Century Code is created and enacted as follows:

An actuarially equivalent graduated benefit option with either a one percent or two percent increase to be applied the first day of January of each year.

**SECTION 12. AMENDMENT.** Subsection 6 of section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 13. AMENDMENT.** Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

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

1. 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, ~~2007~~ 2009, as it applies for governmental plans.
2. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.
3. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal

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

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

**SECTION 14. AMENDMENT.** Subsection 7 of section 54-52.1-03 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 15. AMENDMENT.** Section 54-52.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-03.4. ~~Participation by employees of certain political subdivisions and temporary~~ Temporary employees and employees on unpaid leave of absence.** ~~An~~ employee of a county, city, school district, district health unit, or park district that is not participating in the uniform group insurance program pursuant to section 54-52.1-03.1 and is not eligible for any other employee group health plan may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements established by the board. The board may use risk-adjusted premiums for individual insurance contracts to implement the provisions of this section allowing employees of a county, city, school district, district health unit, or park district to participate in the uniform group insurance program. ~~The county, city, school district, district~~

1 ~~health unit, or park district employee participating in the uniform group insurance program under~~  
2 ~~this section shall pay monthly to the board the premiums in effect for the coverage being~~  
3 ~~provided.~~ A temporary employee employed before August 1, 2007, may elect to participate in  
4 the uniform group insurance program by completing the necessary enrollment forms and  
5 qualifying under the medical underwriting requirements of the program. A temporary employee  
6 employed on or after August 1, 2007, is only eligible to participate in the uniform group  
7 insurance program if the employee is employed at least twenty hours per week and at least  
8 twenty weeks each year of employment. The temporary employee or the temporary  
9 employee's employer shall pay monthly to the board the premiums in effect for the coverage  
10 being provided. An employer may pay health or life insurance premiums for a permanent  
11 employee on an unpaid leave of absence. A political subdivision, department, board, or agency  
12 may make a contribution for coverage under this section.

13       **SECTION 16. EFFECTIVE DATE.** Sections 2, 6, 11, and 12 of this Act become  
14 effective on March 1, 2011.