

Sixty-second  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2108**

Introduced by

Government and Veterans Affairs Committee

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

1 A BILL for an Act to amend and reenact sections 39-03.1-09, 39-03.1-10, 54-52-02.9, 54-52-05,  
2 54-52-06, 54-52-06.1, 54-52-06.3, and 54-52-06.4, subsection 6 of 54-52.6-02, and section  
3 54-52.6-09 of the North Dakota Century Code, relating to increased employer and employee  
4 contributions under the highway patrolmen's retirement plan and public employees retirement  
5 system.

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

7 **SECTION 1. AMENDMENT.** Section 39-03.1-09 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **39-03.1-09. Payments by contributors - Employer payment of employee contribution.**

- 10 1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund  
11 ten and thirty-hundredths percent of the member's monthly salary, which sum must be  
12 deducted from the member's salary and credited to the member's account in the fund.  
13 Member contributions increase by one percent of the member's monthly salary  
14 beginning with the monthly reporting period of January 2012, and increase annually  
15 thereafter by an additional one percent, with the final increase taking place beginning  
16 with the reporting period of January 2015.
- 17 2. The state of North Dakota, at its option, may pay the member contributions required by  
18 subsection 1 for all compensation earned after June 30, 1983, and may pay the  
19 member contributions required to purchase service credit on a pretax basis pursuant  
20 to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in  
21 lieu of contributions by the member. A member may not receive the contributed  
22 amounts directly once the employer has elected to pay the member contributions. If  
23 the state decides not to pay the contributions, the amount that would have been paid  
24 will continue to be deducted from compensation. If contributions are paid by the state,

1           they must be treated as employer contributions in determining tax treatment under this  
2           code and the federal Internal Revenue Code. If contributions are paid by the state,  
3           they must not be included as gross income of the member in determining tax  
4           treatment under this code and the Internal Revenue Code until they are distributed or  
5           made available. The state shall pay these member contributions from the same source  
6           of funds used in paying compensation to the members. The state shall pay these  
7           contributions by effecting an equal cash reduction in the gross salary of the employee  
8           or by an offset against future salary increases or by a combination of a reduction in  
9           gross salary and offset against future salary increases. If member contributions are  
10          paid by the state, they must be treated for the purposes of this chapter in the same  
11          manner and to the same extent as member contributions made prior to the date the  
12          contributions were assumed by the state. The option given employers by this  
13          subsection must be exercised in accordance with rules adopted by the board.

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

30          **SECTION 2. AMENDMENT.** Section 39-03.1-10 of the North Dakota Century Code is  
31          amended and reenacted as follows:

1       **39-03.1-10. Contributions by the state.**

2       The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths  
3 percent of the monthly salary or wage of a participating member. State contributions increase by  
4 one percent of the monthly salary or wage of a participating member beginning with the monthly  
5 reporting period of January 2012, and increase annually thereafter by an additional one percent,  
6 with the final increase taking place beginning with the reporting period of January 2015. If the  
7 member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state  
8 shall contribute, in addition, an amount equal to the required member's contribution. The state  
9 shall pay the associated employer contribution for those members who elect to exercise their  
10 rights under subsection 3 of section 39-03.1-10.1.

11       **SECTION 3. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13       **54-52-02.9. Participation by temporary employees.**

14       A temporary employee may elect, within one hundred eighty days of beginning employment,  
15 to participate in the public employees retirement system and receive credit for service after  
16 enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight  
17 and twelve-hundredths percent times the temporary employee's present monthly salary. The  
18 amount required to be paid by a temporary employee increases by two percent times the  
19 temporary employee's present monthly salary beginning with the monthly reporting period of  
20 January 2012, and increases annually thereafter by an additional two percent, with the final  
21 increase taking place beginning with the reporting period of January 2015. The temporary  
22 employee shall also pay the required monthly contribution to the retiree health benefit fund  
23 established under section 54-52.1-03.2. This contribution must be recorded as a member  
24 contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary  
25 employee's contributions. A temporary employee may continue to participate as a temporary  
26 employee in the public employees retirement system until termination of employment or  
27 reclassification of the temporary employee as a permanent employee. A temporary employee  
28 may not purchase any additional credit, including additional credit under section 54-52-17.4 or  
29 past service under section 54-52-02.6.

30       **SECTION 4. AMENDMENT.** Section 54-52-05 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1       **54-52-05. Membership and assessments - Employer payment of employee**  
2 **contributions.**

- 3       1. Every eligible governmental unit employee concurring in the plan must so state in  
4 writing and all future eligible employees are participating members. An employee who  
5 was not enrolled in the retirement system when eligible to participate must be enrolled  
6 immediately upon notice of the employee's eligibility, unless the employee waives in  
7 writing the employee's right to participate for the previous time of eligibility, to avoid  
8 contributing to the fund for past service. An employee who is eligible for normal  
9 retirement who accepts a retirement benefit under this chapter and who subsequently  
10 becomes employed with a participating employer other than the employer with which  
11 the employee was employed at the time the employee retired under this chapter may,  
12 before reenrolling in the retirement plan, elect to permanently waive future  
13 participation in the retirement plan and the retiree health program and maintain that  
14 employee's retirement status. An employee making this election is not required to  
15 make any future employee contributions to the public employees retirement system  
16 nor is the employee's employer required to make any further contributions on behalf of  
17 that employee.
- 18       2. Each member must be assessed and required to pay monthly four percent of the  
19 monthly salary or wage paid to the member, and such assessment must be deducted  
20 and retained out of such salary in equal monthly installments commencing with the  
21 first month of employment. Member contributions increase by one percent of the  
22 monthly salary or wage paid to the member beginning with the monthly reporting  
23 period of January 2012, and increase annually thereafter by an additional one percent,  
24 with the final increase taking place beginning with the reporting period of  
25 January 2015.
- 26       3. Each employer, at its option, may pay all or a portion of the employee contributions  
27 required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and  
28 54-52-06.4 or the employee contributions required to purchase service credit on a  
29 pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not  
30 receive the contributed amounts directly once the employer has elected to pay the  
31 employee contributions. The amount paid must be paid by the employer in lieu of

1 contributions by the employee. If the state determines not to pay the contributions, the  
2 amount that would have been paid must continue to be deducted from the employee's  
3 compensation. If contributions are paid by the employer, they must be treated as  
4 employer contributions in determining tax treatment under this code and the federal  
5 Internal Revenue Code. If contributions are paid by the employer, they may not be  
6 included as gross income of the employee in determining tax treatment under this  
7 code and the Internal Revenue Code until they are distributed or made available. The  
8 employer shall pay these employee contributions from the same source of funds used  
9 in paying compensation to the employee or from the levy authorized by subsection 5  
10 of section 57-15-28.1. The employer shall pay these contributions by effecting an  
11 equal cash reduction in the gross salary of the employee or by an offset against future  
12 salary increases or by a contribution of a reduction in gross salary and offset against  
13 future salary increases. If employee contributions are paid by the employer, they must  
14 be treated for the purposes of this chapter in the same manner and to the same extent  
15 as employee contributions made prior to the date on which employee contributions  
16 were assumed by the employer. An employer exercising its option under this  
17 subsection shall report its choice to the board in writing.

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

1 reduction in the gross salary of the employee. The employer shall continue making  
2 payments under this section unless otherwise specifically provided for under the  
3 agency's biennial appropriation or by amendment to law.

4 **SECTION 5. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **54-52-06. Employer's contribution to retirement plan.**

7 Each governmental unit shall contribute an amount equal to four and twelve-hundredths  
8 percent of the monthly salary or wage of a participating member. Governmental unit  
9 contributions increase by one percent of the monthly salary or wage of a participating member  
10 beginning with the monthly reporting period of January 2012, and increase annually thereafter  
11 by an additional one percent, with the final increase taking place beginning with the reporting  
12 period of January 2015. For those members who elect to exercise their rights under section  
13 54-52-17.14, the employing governmental unit, or in the case of a member not presently under  
14 covered employment the most recent employing governmental unit, shall pay the associated  
15 employer contribution. If the employee's contribution is paid by the governmental unit under  
16 subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount  
17 equal to the required employee's contribution. Each governmental unit shall pay the contribution  
18 monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into  
19 the retirement fund from its funds appropriated for payroll and salary or any other funds  
20 available for these purposes. Any governmental unit failing to pay the contributions monthly, or  
21 in the case of an election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil  
22 penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay  
23 or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one  
24 percent per month, or both, interest at the actuarial rate of return may be assessed for each  
25 month the contributions are delinquent. If contributions are paid within ninety days of the date  
26 they became due, penalty and interest to be paid on delinquent contributions may be waived.  
27 An employer is required to submit contributions for any past eligible employee who was  
28 employed after July 1, 1977, for which contributions were not made if the employee would have  
29 been eligible to become vested had the employee participated and if the employee elects to join  
30 the public employees retirement system. Employer contributions may not be assessed for  
31 eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05. The

board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

**SECTION 6. AMENDMENT.** Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06.1. Contribution by supreme and district court judges - Employer contribution.**

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary beginning with the monthly reporting period of January 2012, and increase annually thereafter by an additional one percent, with the final increase taking place beginning with the reporting period of January 2015. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system beginning with the monthly reporting period of January 2012, and increase annually thereafter by an additional one percent, with the final increase taking place beginning with the reporting period of January 2015. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

**SECTION 7. AMENDMENT.** Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.**

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's

1 monthly salary beginning with the monthly reporting period of January 2012, and increase  
2 annually thereafter by an additional one-half of one percent, with the final increase taking place  
3 beginning with the reporting period of January 2015. The assessment must be deducted and  
4 retained out of the employee's salary in equal monthly installments. The peace officer's or  
5 correctional officer's employer shall contribute an amount determined by the board to be  
6 actuarially required to support the level of benefits specified in section 54-52-17. If the peace  
7 officer's or correctional officer's assessment is paid by the employer under subsection 3 of  
8 section 54-52-05, the employer shall contribute, in addition, an amount equal to the required  
9 peace officer's or correctional officer's assessment.

10 **SECTION 8. AMENDMENT.** Section 54-52-06.4 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **54-52-06.4. Contribution by peace officers employed by the bureau of criminal**  
13 **investigation - Employer contribution.**

14 Each peace officer employed by the bureau of criminal investigation who is a member of the  
15 public employees retirement system is assessed and shall pay monthly four percent of the  
16 employee's monthly salary. Peace officer contributions increase by one percent of the member's  
17 monthly salary beginning with the monthly reporting period of January 2012, and increase  
18 annually thereafter by an additional one percent, with the final increase taking place beginning  
19 with the reporting period of January 2015. The assessment must be deducted and retained out  
20 of the employee's salary in equal monthly installments. The peace officer's employer shall  
21 contribute an amount determined by the board to be actuarially required to support the level of  
22 benefits specified in section 54-52-17. The employer's contribution must be paid from funds  
23 appropriated for salary or from any other funds available for such purposes. If the peace  
24 officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the  
25 employer shall contribute, in addition, an amount equal to the required peace officer's  
26 assessment.

27 **SECTION 9. AMENDMENT.** Subsection 6 of section 54-52.6-02 of the North Dakota  
28 Century Code is amended and reenacted as follows:

- 29 6. A participating member who becomes a temporary employee may still participate in  
30 the defined contribution retirement plan upon filing an election with the board within  
31 one hundred eighty days of transferring to temporary employee status. The



1 participating member may not become a member of the defined benefit plan as a  
2 temporary employee. The temporary employee electing to participate in the defined  
3 contribution retirement plan shall pay monthly to the fund an amount equal to eight  
4 and twelve-hundredths percent times the temporary employee's present monthly  
5 salary. The amount required to be paid by a temporary employee increases by two  
6 percent times the temporary employee's present monthly salary beginning with the  
7 monthly reporting period of January 2012, and increases annually thereafter by an  
8 additional two percent, with the final increase taking place beginning with the reporting  
9 period of January 2015. The temporary employee shall also pay the required monthly  
10 contribution to the retiree health benefit fund established under section 54-52.1-03.2.  
11 This contribution must be recorded as a member contribution pursuant to section  
12 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A  
13 temporary employee may continue to participate as a temporary employee until  
14 termination of employment or reclassification of the temporary employee as a  
15 permanent employee.

16 **SECTION 10. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **54-52.6-09. Contributions - Penalty.**

- 19 1. Each participating member shall contribute monthly four percent of the monthly salary  
20 or wage paid to the participant, and this assessment must be deducted from the  
21 participant's salary in equal monthly installments commencing with the first month of  
22 participation in the defined contribution retirement plan established under this chapter.  
23 Participating member contributions increase by one percent of the monthly salary or  
24 wage paid to the participant beginning with the monthly reporting period of  
25 January 2012, and increase annually thereafter by an additional one percent, with the  
26 final increase taking place beginning with the reporting period of January 2015.
- 27 2. The employer shall contribute an amount equal to four and twelve-hundredths percent  
28 of the monthly salary or wage of a participating member. Employer contributions  
29 increase by one percent of the monthly salary or wage of a participating member  
30 beginning with the monthly reporting period of January 2012, and increase annually  
31 thereafter by an additional one percent, with the final increase taking place beginning

1           with the reporting period of January 2015. If the employee's contribution is paid by the  
2           employer under subsection 3, the employer shall contribute, in addition, an amount  
3           equal to the required employee's contribution. The employer shall pay monthly such  
4           contribution into the participating member's account from its funds appropriated for  
5           payroll and salary or any other funds available for such purposes. If the employer fails  
6           to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as  
7           interest, one percent of the amount due for each month of delay or fraction thereof  
8           after the payment became due.

- 9           3. Each employer, at its option, may pay the employee contributions required by this  
10          section for all compensation earned after December 31, 1999. The amount paid must  
11          be paid by the employer in lieu of contributions by the employee. If the employer  
12          decides not to pay the contributions, the amount that would have been paid will  
13          continue to be deducted from the employee's compensation. If contributions are paid  
14          by the employer, they must be treated as employer contributions in determining tax  
15          treatment under this code and the federal Internal Revenue Code. Contributions paid  
16          by the employer may not be included as gross income of the employee in determining  
17          tax treatment under this code and the federal Internal Revenue Code until they are  
18          distributed or made available. The employer shall pay these employee contributions  
19          from the same source of funds used in paying compensation to the employee. The  
20          employer shall pay these contributions by effecting an equal cash reduction in the  
21          gross salary of the employee or by an offset against future salary increases or by a  
22          combination of a reduction in gross salary and offset against future salary increases.  
23          Employee contributions paid by the employer must be treated for the purposes of this  
24          chapter in the same manner and to the same extent as employee contributions made  
25          before the date on which employee contributions were assumed by the employer. An  
26          employer shall exercise its option under this subsection by December 1, 1999, and  
27          shall report its choice to the board in writing. The option chosen may not be revoked  
28          for the remainder of the biennium. Thereafter, the option choice must be forwarded to  
29          the board, in writing, by June fifteenth of each odd-numbered year.