

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1228

Introduced by

Representatives Grande, Vigesaa, Weisz

Senators Andrist, Grindberg, Miller

1 A BILL for an Act to amend and reenact subsection 4 of section 54-52-01 and sections
2 54-52-02.5, 54-52-02.9, 54-52.6-01, and 54-52.6-02 of the North Dakota Century Code, relating
3 to a defined contribution retirement plan for state employees; and to provide a statement of
4 legislative intent.

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

6 **SECTION 1. AMENDMENT.** Subsection 4 of section 54-52-01 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 4. "Eligible employee" means all permanent employees who are first employed before
9 August 1, 2011, and who meet all of the eligibility requirements set by this chapter and
10 who are eighteen years or more of age, and includes appointive and elective officials
11 under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, first employed before
12 August 1, 2011, and nonteaching employees of the superintendent of public
13 instruction, including the superintendent of public instruction, who ~~electelected~~ to
14 transfer from the teachers' fund for retirement to the public employees retirement
15 system under section 54-52-02.13, and employees of the state board for career and
16 technical education who ~~electelected~~ to transfer from the teachers' fund for retirement
17 to the public employees retirement system under section 54-52-02.14. Eligible
18 employee does not include ~~nonclassified~~ state employees who ~~elect to become~~
19 ~~members of the retirement plan established under chapter 54-52.6~~ are first employed
20 after July 31, 2011, but does include employees of the judicial branch; employees
21 eligible to participate in the national guard retirement plan or a law enforcement
22 retirement plan; employees of a political subdivision; and employees of the board of
23 higher education and state institutions under the jurisdiction of the board first
24 employed before August 1, 2011, and who are not participating in the teachers'

insurance and annuity association of America - college retirement equities fund
retirement plan.

SECTION 2. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials.

After December 31, 1999, ~~a person~~ and before August 1, 2011, an individual elected or appointed to a state office for the first time must, from and after the date that ~~person~~ individual qualifies and takes office, be a participating member of the public employees retirement system unless that ~~person~~ individual makes an election at any time during the first six months after the date the ~~person~~ individual takes office to participate in the retirement plan established under chapter 54-52.6. After July 31, 2011, an individual elected or appointed to a state office for the first time must, from and after the date that individual qualifies and takes office, be a participating member of the retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the first time" means a ~~person~~ an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that ~~person's~~ individual's appointment.

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

54-52-02.9. Participation by temporary employees.

~~A~~ Before August 1, 2011, a temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. After July 31, 2011, a temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the retirement plan established under chapter 54-52.6. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee

1 as a permanent employee. A temporary employee may not purchase any additional credit,
2 including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

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

5 **54-52.6-01. Definition of terms.**

6 As used in this chapter, unless the context otherwise requires:

- 7 1. "Board" means the public employees retirement system board.
- 8 2. "Deferred member" means a person who elected to receive deferred vested retirement
9 benefits under chapter 54-52.
- 10 3. "Eligible employee" means a permanent state employee, except an employee of the
11 judicial branch or, an employee of the board of higher education and state institutions
12 under the jurisdiction of the board eligible to participate in the teachers' insurance and
13 annuity association of America - college retirement equities fund retirement plan, and
14 an employee eligible to participate in the national guard retirement plan or a law
15 enforcement retirement plan, who is eighteen years or more of age and ~~who is in a~~
16 ~~position not classified by North Dakota human resource management services a~~
17 temporary employee who elects to participate after July 31, 2011, in the retirement
18 plan established under this chapter. If a participating member loses permanent
19 employee status and becomes a temporary employee, the member may still
20 participate in the defined contribution retirement plan.
- 21 4. "Employee" means any person employed by the state, whose compensation is paid
22 out of state funds, or funds controlled or administered by the state or paid by the
23 federal government through any of its executive or administrative officials.
- 24 5. "Employer" means the state of North Dakota.
- 25 6. "Participating member" means an eligible employee who ~~elects to-~~
26 ~~participate~~participates in the defined contribution retirement plan established under
27 this chapter.
- 28 7. "Permanent employee" means a state employee whose services are not limited in
29 duration and who is filling an approved and regularly funded position and is employed
30 twenty hours or more per week and at least five months each year.

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

12 **SECTION 5. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **54-52.6-02. Election.**

- 15 1. The board shall provide an opportunity for each eligible employee who is a member of
16 the public employees retirement system on September 30, 2001, and who has not
17 made a written election under this section to transfer to the defined contribution
18 retirement plan before October 1, 2001, to elect in writing to terminate membership in
19 the public employees retirement system and elect to become a participating member
20 under this chapter. Except as provided in section 54-52.6-03, an election made by an
21 eligible employee under this section is irrevocable. The board shall accept written
22 elections under this section from eligible employees during the period beginning on
23 July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who
24 does not make a written election or who does not file the election during the period
25 specified in this section continues to be a member of the public employees retirement
26 system. An eligible employee who makes and files a written election under this section
27 ceases to be a member of the public employees retirement system effective twelve
28 midnight December 31, 2001; becomes a participating member in the defined
29 contribution retirement plan under this chapter ~~effective 12:01 a.m. January 1, 2002;~~
30 and waives all of that person's rights to a pension, annuity, retirement allowance,
31 insurance benefit, or any other benefit under the public employees retirement system

effective ~~December 31, 2004~~. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before August 1, 2011, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of six months after the date of that reemployment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a

1 written election to terminate membership in the public employees retirement system
2 ceases to be a member of the public employees retirement system effective on the
3 last day of the payroll period that includes the date of the election; becomes a
4 participating member in the defined contribution retirement plan under this chapter
5 effective the first day of the payroll immediately following the date of the election; and
6 waives all of that person's rights to a pension, an annuity, a retirement allowance,
7 insurance benefit, or any other benefit under the public employees retirement system
8 effective the last day of the payroll that includes the date of the election. This section
9 does not affect any right to health benefits or retiree health benefits to which the
10 deferred member may otherwise be entitled.

- 11 3. An eligible employee who elects to participate in the retirement plan established under
12 this chapter must remain a participant even if that employee returns to the classified
13 service or becomes employed by a political subdivision that participates in the public
14 employees retirement system. The contribution amount must be as provided in this
15 chapter, regardless of the position in which the employee is employed.
16 Notwithstanding the irrevocability provisions of this chapter, if a member who elects to
17 participate in the retirement plan established under this chapter becomes a supreme
18 or district court judge, becomes a member of the highway patrol, becomes employed
19 in a position subject to teachers' fund for retirement membership, or becomes an
20 employee of the board of higher education or state institution under the jurisdiction of
21 the board who is eligible to participate in an alternative retirement program established
22 under subsection 6 of section 15-10-17, the member's status as a member of the
23 defined contribution retirement plan is suspended, and the member becomes a new
24 member of the retirement plan for which that member's new position is eligible. The
25 member's account balance remains in the defined contribution retirement plan, but no
26 new contributions may be made to that account. The member's service credit and
27 salary history that were forfeited as a result of the member's transfer to the defined
28 contribution retirement plan remain forfeited, and service credit accumulation in the
29 new retirement plan begins from the first day of employment in the new position. If the
30 member later returns to employment that is eligible for the defined contribution plan,
31 the member's suspension must be terminated, the member again becomes a member

of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.

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

7. A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different

1 from the employer with which the member was employed at the time the member
2 retired but which does participate in any state-sponsored retirement plan may, before
3 reenrolling in the defined contribution retirement plan, elect to permanently waive
4 future participation in the defined contribution retirement plan, whatever plan in which
5 the new employing entity participates, and the retiree health program and maintain
6 that member's retirement status. Neither the member nor the employer are required to
7 make any future retirement contributions on behalf of that employee.

8 **SECTION 6. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the only
9 allowable expenditures that may be made relating to this Act during the first two years after
10 enactment are for administrative costs of implementing this Act during which time the legislative
11 management shall receive two annual actuarial valuations of the public employees retirement
12 system to identify the fiscal effect of this Act.