

Sixty-fourth
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

(At the request of the Public Employees Retirement System)

1 A BILL for an Act to amend and reenact section 54-52-02.9, subsection 2 of section 54-52-05,
2 sections 54-52-06, 54-52-06.4, and 54-52-17, subsection 1 of section 54-52-17.2, and sections
3 54-52.6-02 and 54-52.6-09 of the North Dakota Century Code, relating to increases in employer
4 and employee contributions under the public employees retirement system defined benefit and
5 defined contribution plans, decreased employee contributions under the public employees
6 retirement system for peace officers employed by the bureau of criminal investigation, and
7 benefit changes for employees first enrolled after December 31, 2015; and to provide a penalty.

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

9 **SECTION 1. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **54-52-02.9. Participation by temporary employees.**

12 A temporary employee may elect, within one hundred eighty days of beginning employment,
13 to participate in the public employees retirement system and receive credit for service after
14 enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight
15 and twelve-hundredths percent times the temporary employee's present monthly salary. The
16 amount required to be paid by a temporary employee increases by two percent times the
17 temporary employee's present monthly salary beginning with the monthly reporting period of
18 January 2012; ~~and; with an additional two percent increase, beginning with the reporting period~~
19 ~~of January 2013; and; with an additional increase of two percent, beginning with the monthly~~
20 ~~reporting period of January 2014; and with an additional increase of two percent, beginning with~~
21 ~~the monthly reporting period of January 2016.~~ The temporary employee shall also pay the
22 required monthly contribution to the retiree health benefit fund established under section
23 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section
24 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary

1 employee may continue to participate as a temporary employee in the public employees
2 retirement system until termination of employment or reclassification of the temporary employee
3 as a permanent employee. A temporary employee may not purchase any additional credit,
4 including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

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

7 2. Each member must be assessed and required to pay monthly four percent of the
8 monthly salary or wage paid to the member, and such assessment must be deducted
9 and retained out of such salary in equal monthly installments commencing with the
10 first month of employment. Member contributions increase by one percent of the
11 monthly salary or wage paid to the member beginning with the monthly reporting
12 period of January 2012,~~and;~~ with an additional increase of one percent, beginning
13 with the monthly reporting period of January 2013,~~and;~~ with an additional increase of
14 one percent, beginning with the monthly reporting period of January 2014; and with an
15 additional increase of one percent, beginning with the monthly reporting period of
16 January 2016.

17 **SECTION 3. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **54-52-06. Employer's contribution to retirement plan.**

20 Each governmental unit shall contribute an amount equal to four and twelve-hundredths
21 percent of the monthly salary or wage of a participating member. Governmental unit
22 contributions increase by one percent of the monthly salary or wage of a participating member
23 beginning with the monthly reporting period of January 2012,~~and;~~ with an additional increase of
24 one percent, beginning with the reporting period of January 2013,~~and with;~~ an additional
25 increase of one percent, beginning with the monthly reporting period of January 2014; and with
26 an additional increase of one percent, beginning with the monthly reporting period of January
27 2016. For those members who elect to exercise their rights under section 54-52-17.14, the
28 employing governmental unit, or in the case of a member not presently under covered
29 employment the most recent employing governmental unit, shall pay the associated employer
30 contribution. If the employee's contribution is paid by the governmental unit under subsection 3
31 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the

1 required employee's contribution. Each governmental unit shall pay the contribution monthly, or
2 in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement
3 fund from its funds appropriated for payroll and salary or any other funds available for these
4 purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an
5 election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty
6 dollars and, as interest, one percent of the amount due for each month of delay or fraction
7 thereof after the payment became due. In lieu of assessing a civil penalty or one percent per
8 month, or both, interest at the actuarial rate of return may be assessed for each month the
9 contributions are delinquent. If contributions are paid within ninety days of the date they became
10 due, penalty and interest to be paid on delinquent contributions may be waived. An employer is
11 required to submit contributions for any past eligible employee who was employed after July 1,
12 1977, for which contributions were not made if the employee would have been eligible to
13 become vested had the employee participated and if the employee elects to join the public
14 employees retirement system. Employer contributions may not be assessed for eligible service
15 that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall
16 report to each session of the legislative assembly the contributions necessary, as determined by
17 the actuarial study, to maintain the fund's actuarial soundness.

18 **SECTION 4. AMENDMENT.** Section 54-52-06.4 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **54-52-06.4. Contribution by peace officers employed by the bureau of criminal**
21 **investigation - Employer contribution.**

22 Each peace officer employed by the bureau of criminal investigation who is a member of the
23 public employees retirement system is assessed and shall pay monthly four percent of the
24 employee's monthly salary. Peace officer contributions increase by one percent of the member's
25 monthly salary beginning with the monthly reporting period of January 2012, and with an
26 additional increase of one percent, beginning with the reporting period of January 2013. Peace
27 officer contributions decrease by one-half of one percent of the member's monthly salary
28 beginning with the monthly reporting period of January 2016. The assessment must be
29 deducted and retained out of the employee's salary in equal monthly installments. The peace
30 officer's employer shall contribute an amount determined by the board to be actuarially required
31 to support the level of benefits specified in section 54-52-17. The employer's contribution must

1 be paid from funds appropriated for salary or from any other funds available for such purposes.
2 If the peace officer's assessment is paid by the employer under subsection 3 of section
3 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace
4 officer's assessment.

5 **SECTION 5. AMENDMENT.** Section 54-52-17 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-52-17. Formulation of plan.**

8 Participating members shall receive benefits according to this section and according to
9 rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a
10 prior service benefit if the person was not continuously employed by a governmental unit in
11 North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

- 12 1. Participating members shall receive credit for full-time employment or its equivalent
13 from the date they attain eligibility until their normal retirement date, postponed
14 retirement date, or early retirement date, as defined in this section. Part-time
15 employment will be recognized as full-time employment on a prorated basis as the
16 board may prescribe.
- 17 2. Retirement benefits are calculated from the participating member's final average
18 salary, which is the average of the highest salary received by the member for any
19 thirty-six months employed during the last one hundred twenty months of employment.
20 For members who terminate employment on or after August 1, 2010, final average
21 salary is the average of the highest salary received by the member for any thirty-six
22 months employed during the last one hundred eighty months of employment. For
23 members who terminate employment between July 31, 2005, and August 1, 2010, final
24 average salary is the average of the highest salary received by the member for any
25 thirty-six months employed during the period for which the board has appropriate and
26 accurate salary records on its electronic database, but that period may not be more
27 than the last one hundred eighty months of employment. Except for a national guard
28 security officer or firefighter, a peace officer or correctional officer employed by the
29 bureau of criminal investigation or by a political subdivision, or a supreme court or
30 district court judge, for members first enrolled after December 31, 2015, final average
31 salary is the average salary earned in the five highest periods of twelve consecutive

1 months employed during the one hundred eighty months immediately preceding
2 retirement. Months not employed without earnings are excluded in arriving at the
3 thirty-six months to be used for the purpose of computing an average. If theFor a
4 participating member first enrolled before January 1, 2016, who has worked for less
5 than thirty-six months at the normal retirement date, the final average salary is the
6 average salary for the total months of employment. Except for a national guard
7 security officer or firefighter, a peace officer or correctional officer employed by the
8 bureau of criminal investigation or by a political subdivision, or a supreme court or
9 district court judge, for members first enrolled after December 31, 2015, who worked
10 for less than sixty months at the normal retirement date, the final average salary is the
11 average salary for the total months of employment.

12 3. Retirement dates are defined as follows:

- 13 a. Normal retirement date, except for a national guard security officer or firefighter
14 or a peace officer or correctional officer employed by the bureau of criminal
15 investigation or by a political subdivision, is:
- 16 (1) The first day of the month next following the month in which the member
17 attains the age of sixty-five years; or
- 18 (2) When the member has a combined total of years of service credit and years
19 of age equal to eighty-five and has not received a retirement benefit under
20 this chapter.
- 21 b. Except for a national guard security officer or firefighter, a peace officer or
22 correctional officer employed by the bureau of criminal investigation or by a
23 political subdivision, or a supreme court or district court judge, normal retirement
24 date for members first enrolled after December 31, 2015 is:
- 25 (1) The first day of the month next following the month in which the member
26 attains the age of sixty-five years; or
- 27 (2) When the member has a combined total of years of service credit and years
28 of age equal to ninety and the member attains a minimum age of sixty and
29 has not received a retirement benefit under this chapter.
- 30 c. Normal retirement date for a national guard security officer or firefighter is the first
31 day of the month next following the month in which the national guard security

1 officer or firefighter attains the age of fifty-five years and has completed at least
2 three eligible years of employment as a national guard security officer or
3 firefighter.

4 ~~e.d.~~ Normal retirement date for a peace officer or correctional officer employed by a
5 political subdivision is:

6 (1) The first day of the month next following the month in which the peace
7 officer or correctional officer attains the age of fifty-five years and has
8 completed at least three eligible years of employment as a peace officer or
9 correctional officer; or

10 (2) When the peace officer or correctional officer has a combined total of years
11 of service credit and years of age equal to eighty-five and has not received
12 a retirement benefit under this chapter.

13 ~~e.e.~~ Normal retirement date for a peace officer employed by the bureau of criminal
14 investigation is:

15 (1) The first day of the month next following the month in which the peace
16 officer attains the age of fifty-five years and has completed at least three
17 eligible years of employment as a peace officer; or

18 (2) When the peace officer has a combined total of years of service credit and
19 years of age equal to eighty-five and has not received a retirement benefit
20 under this chapter.

21 ~~e.f.~~ Postponed retirement date is the first day of the month next following the month
22 in which the member, on or after July 1, 1977, actually severs or has severed the
23 member's employment after reaching the normal retirement date.

24 ~~f.g.~~ Early retirement date, except for a national guard security officer or firefighter or a
25 peace officer or correctional officer employed by the bureau of criminal
26 investigation or by a political subdivision, is the first day of the month next
27 following the month in which the member attains the age of fifty-five years and
28 has completed three years of eligible employment. For a national guard security
29 officer or firefighter, early retirement date is the first day of the month next
30 following the month in which the national guard security officer or firefighter
31 attains the age of fifty years and has completed at least three years of eligible

employment. For a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.

g-h. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:

- (1) Became disabled during the period of eligible employment; and
- (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

4. The board shall calculate retirement benefits as follows:

- a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

(1) Service benefit equals two percent of final average salary multiplied by the number of years of service employment.

(2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.

b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:

(1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.

(2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.

c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.

d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, early retirement benefits for members first enrolled after December 31, 2015, are calculated for single life benefits accrued to the date of termination of employment, but must be reduced by a fixed rate of eight percent to account for benefit payments beginning before the normal retirement date. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only

1 after having completed three years of eligible employment. A supreme or district
2 court judge retiree is eligible for early retirement benefits only after having
3 completed five years of eligible employment.

4 e. Except for supreme and district court judges, disability retirement benefits are
5 twenty-five percent of the member's final average salary. Disability retirement
6 benefits for supreme and district court judges are seventy percent of final
7 average salary reduced by the member's primary social security benefits and by
8 any workforce safety and insurance benefits paid. The minimum monthly
9 disability retirement benefit under this section is one hundred dollars.

10 5. Upon termination of employment after completing three years of eligible employment,
11 except for supreme and district court judges, who must complete five years of eligible
12 employment, but before normal retirement date, a member who does not elect to
13 receive early retirement benefits is eligible to receive deferred vested retirement
14 benefits payable commencing on the member's normal retirement date in one of the
15 optional forms provided in subsection 9. Members who have delayed or inadvertently
16 failed to apply for retirement benefits to commence on their normal retirement date
17 may choose to receive either a lump sum payment equal to the amount of missed
18 payments, or an actuarial increase to the form of benefit the member has selected,
19 which increase must reflect the missed payments.

20 6. If before retiring a member dies after completing three years of eligible employment,
21 except for supreme and district court judges, who must have completed five years of
22 eligible employment, the board shall pay the member's account balance to the
23 member's designated beneficiary as provided in this subsection. If the member has
24 designated an alternate beneficiary with the surviving spouse's written consent, the
25 board shall pay the member's account balance to the named beneficiary. If the
26 member has named more than one primary beneficiary, the board shall pay the
27 member's account balance to the named primary beneficiaries in the percentages
28 designated by the member or, if the member has not designated a percentage for the
29 beneficiaries, in equal percentages. If one or more of the primary beneficiaries has
30 predeceased the member, the board shall pay the predeceased beneficiary's share to
31 the remaining primary beneficiaries. If any beneficiary survives the member, yet dies

1 before distribution of the beneficiary's share, the beneficiary must be treated as if the
2 beneficiary predeceased the member. If there are no remaining primary beneficiaries,
3 the board shall pay the member's account balance to the contingent beneficiaries in
4 the same manner. If there are no remaining designated beneficiaries, the board shall
5 pay the member's account balance to the member's estate. If the member has not
6 designated an alternate beneficiary or the surviving spouse is the beneficiary, the
7 surviving spouse of the member may select a form of payment as follows:

8 a. If the member was a supreme or district court judge, the surviving spouse may
9 select one of the following optional forms of payment:

10 (1) A lump sum payment of the member's retirement account as of the date of
11 death.

12 (2) Payments as calculated for the deceased member as if the member was of
13 normal retirement age at the date of death, payable until the spouse dies.

14 b. The surviving spouse of all other members may select one of the following
15 options:

16 (1) A lump sum payment of the member's retirement account as of the date of
17 death.

18 (2) Payment of a monthly retirement benefit equal to fifty percent of the
19 deceased member's accrued single life retirement benefits until the spouse
20 dies.

21 (3) If the member dies on or after the member's normal retirement date, the
22 payment of a monthly retirement benefit equal to an amount that would have
23 been paid to the surviving spouse if the member had retired on the day of
24 the member's death and had selected a one hundred percent joint and
25 survivor annuity, payable until the spouse dies. A surviving spouse who
26 received a benefit under this subsection as of July 31, 1995, is entitled to
27 the higher of that person's existing benefit or the equivalent of the accrued
28 benefit available under the one hundred percent joint and survivor provision
29 as if the deceased member were of normal retirement age, with the increase
30 payable beginning August 1, 1995.

- 1 7. If a member not coming under the provisions of subsection 6 terminates employment
2 because of death, permanent and total disability, or any voluntary or involuntary
3 reason prior to retirement, the member or the member's designated beneficiary is
4 entitled to the member's account balance at termination. The board automatically shall
5 refund a member's account balance if the member has completed less than three
6 years of eligible employment, has an account balance of less than one thousand
7 dollars, and was not a supreme or district court judge. If the member was a supreme
8 or district court judge, the board automatically shall refund a member's account
9 balance if the member completed less than five years of eligible employment. A
10 member may waive the refund if the member submits a written statement to the board,
11 within thirty days after termination, requesting that the member's account balance
12 remain in the fund.
- 13 8. The surviving spouse of a member receiving retirement benefits must be the
14 member's primary beneficiary unless there is no surviving spouse or the surviving
15 spouse designates an alternate beneficiary in writing. If a member receiving retirement
16 benefits or the member's surviving spouse receiving retirement benefits dies before
17 the total amount of benefits paid to either or both equals the amount of the member's
18 account balance at retirement, the difference must be paid to the named beneficiary of
19 the recipient or, if there is no named beneficiary, to the recipient's estate.
- 20 9. The board shall adopt rules providing for the receipt of retirement benefits in the
21 following optional forms:
- 22 a. Single life.
- 23 b. An actuarially equivalent joint and survivor option, with fifty percent or one
24 hundred percent options.
- 25 c. Actuarially equivalent life with ten-year or twenty-year certain options.
- 26 d. An actuarially equivalent partial lump sum distribution option with a twelve-month
27 maximum lump sum distribution.
- 28 e. An actuarially equivalent graduated benefit option with either a one percent or
29 two percent increase to be applied the first day of January of each year.
- 30 Except for supreme and district court judges, unless a member specifically requests
31 that the member receive benefits according to one of these options at the time of

1 applying for retirement, all retirement benefits must be in the form of a single life
2 benefit. For supreme and district court judges, unless a member specifically requests
3 that the member receive benefits according to one of these options at the time of
4 applying for retirement, all retirement benefits must be in the form of a lifetime monthly
5 pension with fifty percent of the benefit continuing for the life of the surviving spouse, if
6 any.

7 10. The fund may accept rollovers from other eligible plans under rules adopted by the
8 board for the purchase of additional service credit, but only to the extent the transfer is
9 a rollover contribution that meets the requirement of section 408 of the Internal
10 Revenue Code.

11 11. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue
12 Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code
13 section 403(b) annuity or Internal Revenue Code section 457 deferred compensation
14 plan for the purchase of permissive service credit, as defined in Internal Revenue
15 Code section 415(n)(3)(A) or as repayment of a cashout from a governmental plan
16 under Internal Revenue Code section 415(k)(3).

17 12. The board may establish individual retirement accounts and individual retirement
18 annuities as permitted under section 408(q) of the Internal Revenue Code to allow
19 employees to make voluntary employee contributions. The board may adopt rules to
20 implement and administer the accounts and annuities under this section.

21 **SECTION 6. AMENDMENT.** Subsection 1 of section 54-52-17.2 of the North Dakota
22 Century Code is amended and reenacted as follows:

- 23 1. a. For the purpose of determining eligibility for benefits under this chapter, an
24 employee's years of service credit is the total of the years of service credit earned
25 in the public employees retirement system and the years of service credit earned
26 in any number of the following:
- 27 (1) The teachers' fund for retirement.
 - 28 (2) The highway patrolmen's retirement system.
 - 29 (3) The teachers' insurance and annuity association of America - college
30 retirement equities fund (TIAA-CREF), for service credit earned while
31 employed by North Dakota institutions of higher education.

1 Service credit may not exceed twelve months of credit per year.

2 b. Pursuant to rules adopted by the board, an employee who has service credit in
3 the system and in any of the plans described in paragraphs 1 and 2 of
4 subdivision a is entitled to benefits under this chapter. The employee may elect to
5 have benefits calculated using the benefit formula in section 54-52-17 under
6 either of the following methods:

7 (1) The average of the highest salary received by the member for any thirty-six
8 months employed during the last one hundred twenty months of
9 employment in the public employees retirement system. If the participating
10 member has worked for less than thirty-six months at retirement, the final
11 average salary is the average salary for the total months of employment. If
12 the participating member was first enrolled after December 31, 2015, and
13 worked for less than sixty months at retirement, the final average salary is
14 the average salary for the total months of employment.

15 (2) The average of the highest salary received by the member for any thirty-six
16 consecutive months during the last one hundred twenty months of
17 employment with any of the three eligible employers under this subdivision,
18 with service credit not to exceed one month in any month when combined
19 with the service credit earned in the alternate retirement system.

20 The board shall calculate benefits for an employee under this subsection by using only
21 those years of service credit earned under this chapter.

22 **SECTION 7. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **54-52.6-02. (Effective through July 31, 2017) Election.**

25 1. The board shall provide an opportunity for eligible employees who are new members
26 of the public employees retirement system under chapter 54-52 to transfer to the
27 defined contribution plan under this chapter pursuant to the rules and policies adopted
28 by the board. An election made by a member of the public employees retirement
29 system under chapter 54-52 to transfer to the defined contribution retirement plan
30 under this chapter is irrevocable. For an individual who elects to transfer membership
31 from the public employees retirement system under chapter 54-52 to the defined

1 contribution retirement plan under this chapter, the board shall transfer a lump sum
2 amount from the public employees retirement system fund to the participating
3 member's account in the defined contribution retirement plan under this chapter.
4 However, if the individual terminates employment prior to receiving the lump sum
5 transfer under this section, the election made is ineffective and the individual remains
6 a member of the public employees retirement system under chapter 54-52 and retains
7 all the rights and privileges under that chapter. This section does not affect an
8 individual's right to health benefits or retiree health benefits under chapter 54-52.1.

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

14 3. A participating member who becomes a temporary employee may still participate in
15 the defined contribution retirement plan upon filing an election with the board within
16 one hundred eighty days of transferring to temporary employee status. The
17 participating member may not become a member of the defined benefit plan as a
18 temporary employee. The temporary employee electing to participate in the defined
19 contribution retirement plan shall pay monthly to the fund an amount equal to eight
20 and twelve-hundredths percent times the temporary employee's present monthly
21 salary. The amount required to be paid by a temporary employee increases by two
22 percent times the temporary employee's present monthly salary beginning with the
23 monthly reporting period of January 2012 ~~and;~~ with an additional increase of two
24 percent, beginning with the monthly reporting period of January 2013, ~~and;~~ with an
25 additional increase of two percent, beginning with the monthly reporting period of
26 January 2014; and with an additional increase of two percent, beginning with the
27 monthly reporting period of January 2016. The temporary employee shall also pay the
28 required monthly contribution to the retiree health benefit fund established under
29 section 54-52.1-03.2. This contribution must be recorded as a member contribution
30 pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's
31 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.

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

(Effective after July 31, 2017) Election.

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

1 first employed and entered upon the payroll of that person's employer after
2 September 30, 2001, may make an election to participate in the defined contribution
3 retirement plan established under this chapter at any time during the first six months
4 after the date of employment. If the board, in its sole discretion, determines that the
5 employee was not adequately notified of the employee's option to participate in the
6 defined contribution retirement plan, the board may provide the employee a
7 reasonable time within which to make that election, which may extend beyond the
8 original six-month decision window.

- 9 2. If an individual who is a deferred member of the public employees retirement system
10 on September 30, 2001, is reemployed and by virtue of that employment is again
11 eligible for membership in the public employees retirement system under chapter
12 54-52, the individual may elect in writing to remain a member of the public employees
13 retirement system or if eligible to participate in the defined contribution retirement plan
14 established under this chapter to terminate membership in the public employees
15 retirement system and become a participating member in the defined contribution
16 retirement plan established under this chapter. An election made by a deferred
17 member under this section is irrevocable. The board shall accept written elections
18 under this section from a deferred member during the period beginning on the date of
19 the individual's reemployment and ending upon the expiration of six months after the
20 date of that reemployment. If the board, in its sole discretion, determines that the
21 employee was not adequately notified of the employee's option to participate in the
22 defined contribution retirement plan, the board may provide the employee a
23 reasonable time within which to make that election, which may extend beyond the
24 original six-month decision window. A deferred member who makes and files a written
25 election to remain a member of the public employees retirement system retains all
26 rights and is subject to all conditions as a member of that retirement system. A
27 deferred member who does not make a written election or who does not file the
28 election during the period specified in this section continues to be a member of the
29 public employees retirement system. A deferred member who makes and files a
30 written election to terminate membership in the public employees retirement system
31 ceases to be a member of the public employees retirement system effective on the

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

- 9 3. An eligible employee who elects to participate in the retirement plan established under
10 this chapter must remain a participant even if that employee returns to the classified
11 service or becomes employed by a political subdivision that participates in the public
12 employees retirement system. The contribution amount must be as provided in this
13 chapter, regardless of the position in which the employee is employed.

14 Notwithstanding the irrevocability provisions of this chapter, if a member who elects to
15 participate in the retirement plan established under this chapter becomes a supreme
16 or district court judge, becomes a member of the highway patrol, becomes employed
17 in a position subject to teachers' fund for retirement membership, or becomes an
18 employee of the board of higher education or state institution under the jurisdiction of
19 the board who is eligible to participate in an alternative retirement program established
20 under subsection 6 of section 15-10-17, the member's status as a member of the
21 defined contribution retirement plan is suspended, and the member becomes a new
22 member of the retirement plan for which that member's new position is eligible. The
23 member's account balance remains in the defined contribution retirement plan, but no
24 new contributions may be made to that account. The member's service credit and
25 salary history that were forfeited as a result of the member's transfer to the defined
26 contribution retirement plan remain forfeited, and service credit accumulation in the
27 new retirement plan begins from the first day of employment in the new position. If the
28 member later returns to employment that is eligible for the defined contribution plan,
29 the member's suspension must be terminated, the member again becomes a member
30 of the defined contribution retirement plan, and the member's account resumes
31 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 amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, ~~and;~~ with an additional increase of two percent, beginning with the monthly reporting period of January 2013, ~~and;~~ with an additional increase of two percent, beginning with the monthly reporting period of January 2014; and with an additional increase of two percent, beginning with the monthly reporting period of January 2016. 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

1 contributions. A temporary employee may continue to participate as a temporary
2 employee until termination of employment or reclassification of the temporary
3 employee as a permanent employee.

4 7. A former participating member who has accepted a retirement distribution pursuant to
5 section 54-52.6-13 and who subsequently becomes employed by an entity different
6 from the employer with which the member was employed at the time the member
7 retired but which does participate in any state-sponsored retirement plan may, before
8 reenrolling in the defined contribution retirement plan, elect to permanently waive
9 future participation in the defined contribution retirement plan, whatever plan in which
10 the new employing entity participates, and the retiree health program and maintain
11 that member's retirement status. Neither the member nor the employer are required to
12 make any future retirement contributions on behalf of that employee.

13 **SECTION 8. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **54-52.6-09. Contributions - Penalty.**

16 1. Each participating member shall contribute monthly four percent of the monthly salary
17 or wage paid to the participant, and this assessment must be deducted from the
18 participant's salary in equal monthly installments commencing with the first month of
19 participation in the defined contribution retirement plan established under this chapter.
20 Participating member contributions increase by one percent of the monthly salary or
21 wage paid to the participant beginning with the monthly reporting period of
22 January 2012,~~and;~~ with an additional increase of one percent, beginning with the
23 reporting period of January 2013,~~and;~~ with an additional increase of one percent,
24 beginning with the monthly reporting period of January 2014; and with an additional
25 increase of one percent, beginning with the monthly reporting period of January 2016.

26 2. The employer shall contribute an amount equal to four and twelve-hundredths percent
27 of the monthly salary or wage of a participating member. Employer contributions
28 increase by one percent of the monthly salary or wage of a participating member
29 beginning with the monthly reporting period of January 2012,~~and;~~ with an additional
30 increase of one percent, beginning with the monthly reporting period of January 2013,
31 ~~and;~~ with an additional increase of one percent, beginning with the monthly reporting

1 period of January 2014; and with an additional increase of one percent, beginning with
2 the monthly reporting period of January 2016. If the employee's contribution is paid by
3 the employer under subsection 3, the employer shall contribute, in addition, an amount
4 equal to the required employee's contribution. The employer shall pay monthly such
5 contribution into the participating member's account from its funds appropriated for
6 payroll and salary or any other funds available for such purposes. If the employer fails
7 to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as
8 interest, one percent of the amount due for each month of delay or fraction thereof
9 after the payment became due.

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