

FIRST ENGROSSMENT

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2058

Introduced by

Government and Veterans Affairs Committee

(At the request of the Public Employees Retirement System)

1 A BILL for an Act to create and enact sections 54-52-02.11 and 54-52-02.12, a new subsection
2 to section 54-52-17.4, two new sections to chapter 54-52, three new subsections to section
3 54-52-26, section 54-52.2-03.3, and two new sections to chapter 54-52.6 of the North Dakota
4 Century Code, relating to participation, service credit purchases, confidentiality under the public
5 employees retirement system, contributions to a defined contribution plan account, qualified
6 domestic relations order applicability to the deferred compensation program, and compliance
7 with the Internal Revenue Code; to amend and reenact section 28-22-19, subsections 3, 7, 10,
8 and 14 of section 54-52-01, sections 54-52-02 and 54-52-02.5, subsection 3 of section
9 54-52-05, sections 54-52-17, 54-52-17.2, 54-52-17.4, and 54-52-27, subsection 1 of section
10 54-52.1-03.3, section 54-52.2-06, and subsection 4 of section 54-52.6-13 of the North Dakota
11 Century Code, relating to exemptions from legal process, definitions, membership,
12 contributions, benefits, service credit, conversion of sick leave, and retiree health benefits
13 under the public employees retirement system and account refunds for members of the defined
14 contribution retirement system; and to repeal section 54-52-17.8 of the North Dakota Century
15 Code, relating to benefit limitations under the public employees retirement system.

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

17 **SECTION 1. AMENDMENT.** Section 28-22-19 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **28-22-19. Exemptions from legal process - Public pensions, assistance, and**
20 **awards.** The following amounts are exempt from liability for debts of the person to or on
21 account of whom the amounts are paid, and are not subject to seizure upon execution or other
22 process:

- 23 1. All pensions or annuities or retirement, disability, death, or other benefits paid or
- 24 payable by, or amounts received as a return of contributions and interest from, a

1 retirement system established pursuant to state law by the state except as
2 provided by sections 15-39.1-12.2, 39-03.1-14.2, ~~and~~ 54-52-17.6, and
3 54-52.2-03.3, a state agency, a political subdivision of the state, or a firefighters
4 relief association for retirement, annuity, pension, disability benefit, or death benefit
5 purposes.

6 2. All awards made pursuant to chapter 54-23.4 as compensation for victims of
7 crimes.

8 3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

9 **SECTION 2. AMENDMENT.** Subsections 3, 7, 10, and 14 of section 54-52-01 of the
10 North Dakota Century Code are amended and reenacted as follows:

11 3. "Eligible employee" means all permanent employees who meet all of the eligibility
12 requirements set by this chapter and who are eighteen years or more of age, and
13 includes appointive and elective officials ~~who elect to remain members of the~~
14 ~~retirement system; provided, that judges of the supreme and district courts eligible~~
15 ~~under section 54-52-02.3 and appointed officials who elect to participate under~~
16 ~~section 54-52-02.5 are eligible employees and shall participate in the public~~
17 ~~employees retirement system~~ under sections 54-52-02.5, 54-52-02.11, and
18 54-52-02.12. Eligible employee does not include nonclassified state employees
19 who elect to become members of the retirement plan established under chapter
20 54-52.6 but does include employees of the judicial branch and employees of the
21 board of higher education and state institutions under the jurisdiction of the board.

22 7. "Governmental unit" means the state of North Dakota, except the highway patrol
23 for members of the retirement plan created under chapter 39-03.1, or a
24 participating political subdivision thereof.

25 10. "Permanent employee" means a governmental unit employee whose services are
26 not limited in duration and who is filling an approved and regularly funded position
27 in an eligible governmental unit, and is employed twenty hours or more per week
28 and at least ~~five months~~ twenty weeks each year of employment.

29 14. "Retirement" means the acceptance of a retirement allowance under this chapter
30 upon either termination of employment or termination of participation in the
31 retirement plan and meeting the normal retirement date.

1 **SECTION 3. AMENDMENT.** Section 54-52-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-52-02. Formulation of plan - Exclusion of employees covered by plans in**
4 **existence.** All departments, boards, institutions, commissions, or agencies of the state of
5 North Dakota, the Garrison diversion conservancy district, district health units, the supreme
6 court, and the district courts, hereinafter referred to as agency, shall participate in a retirement
7 system which will provide for the payment of benefits to state and political subdivision
8 employees or to their beneficiaries thereby enabling the employees to care for themselves and
9 their dependents and which by its provisions will improve state and political subdivision
10 employment, reduce excessive personnel turnover, and offer career employment to high-grade
11 men and women. However, a city health department providing health services in a city-county
12 health district formed under chapter 23-35 is not required to participate in the public employees
13 retirement system but may participate in the public employees retirement system under section
14 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the
15 state is contributing, except social security, are not eligible for duplicate coverage except as
16 provided under sections 39-03.1-14.1 and 54-52-17.2.

17 **SECTION 4. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **54-52-02.5. Newly elected and appointed state officials.** After December 31, 1999,
20 a person elected or appointed to an a state office for the first time must, from and after the date
21 that person qualifies and takes office, be a participating member of the public employees
22 retirement system unless that person makes an election at any time during the first six months
23 after the date the person takes office to participate in the retirement plan established under
24 chapter 54-52.6. As used in this section, the phrase "for the first time" means a person
25 appointed, who, after December 31, 1999, does not hold office as an appointed official at the
26 time of that person's appointment.

27 **SECTION 5.** Section 54-52-02.11 of the North Dakota Century Code is created and
28 enacted as follows:

29 **54-52-02.11. Participation requirements for nonstate elected officials.** Elected
30 officials of participating counties, at their individual option, may enroll in the defined benefit plan
31 within the first six months of their term.

1 **SECTION 6.** Section 54-52-02.12 of the North Dakota Century Code is created and
2 enacted as follows:

3 **54-52-02.12. Participation requirements for nonstate appointed officials.**

4 Nonstate appointed officials of participating employers appointed on or after August 1, 1999,
5 who meet the participation requirements of this chapter must be enrolled in the defined benefit
6 plan effective within the first month of taking office.

7 **SECTION 7. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 3. Each employer, at its option, may pay all or a portion of the employee contributions
10 required by subsection 2 and sections 54-52-06.1 and 54-52-06.2 or the employee
11 contributions required to purchase service credit on a pretax basis pursuant to
12 subsection 6 of section 54-52-17.4. Employees may not receive the contributed
13 amounts directly once the employer has elected to pay the employee contributions.
14 The amount paid must be paid by the employer in lieu of contributions by the
15 employee. If the state determines not to pay the contributions, the amount that
16 would have been paid must continue to be deducted from the employee's
17 compensation. If contributions are paid by the employer, they must be treated as
18 employer contributions in determining tax treatment under this code and the
19 federal Internal Revenue Code. If contributions are paid by the employer, they
20 may not be included as gross income of the employee in determining tax treatment
21 under this code and the Internal Revenue Code until they are distributed or made
22 available. The employer shall pay these employee contributions from the same
23 source of funds used in paying compensation to the employee or from the levy
24 authorized by subsection 5 of section 57-15-28.1. The employer shall pay these
25 contributions by effecting an equal cash reduction in the gross salary of the
26 employee or by an offset against future salary increases or by a contribution of a
27 reduction in gross salary and offset against future salary increases. If employee
28 contributions are paid by the employer, they must be treated for the purposes of
29 this chapter in the same manner and to the same extent as employee contributions
30 made prior to the date on which employee contributions were assumed by the

1 employer. An employer exercising its option under this subsection shall report its
2 choice to the board, in writing, ~~by June fifteenth of each odd-numbered year.~~

3 **SECTION 8. AMENDMENT.** Section 54-52-17 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-52-17. Formulation of plan.** Participating members shall receive benefits
6 according to this section and according to rules adopted by the board, not inconsistent with this
7 chapter. No person is entitled to receive a prior service benefit if the person was not
8 continuously employed by a governmental unit in North Dakota for a period of not less than two
9 years immediately prior to eligibility for retirement.

- 10 1. Participating members shall receive credit for full-time employment or its
11 equivalent from the date they attain eligibility until their normal retirement date,
12 postponed retirement date, or early retirement date, as defined in this section.
13 Part-time employment will be recognized as full-time employment on a prorated
14 basis as the board may prescribe.
- 15 2. Retirement benefits are calculated from the participating member's final average
16 salary, which is the average of the highest salary received by the member for any
17 thirty-six months employed during the last one hundred twenty months of
18 employment. Months not employed are excluded in arriving at the thirty-six
19 months to be used for the purpose of computing an average. If the participating
20 member has worked for less than thirty-six months at the normal retirement date,
21 the final average salary is the average salary for the total months of employment.
- 22 3. Retirement dates are defined as follows:
 - 23 a. Normal retirement date, except for a national guard security officer or
24 firefighter, is:
 - 25 (1) The first day of the month next following the month in which the
26 member attains the age of sixty-five years; or
 - 27 (2) When the member has a combined total of years of service credit and
28 years of age equal to eighty-five and has not received a retirement
29 benefit under this chapter.
 - 30 b. Normal retirement date for a national guard security officer or firefighter is the
31 first day of the month next following the month in which the national guard

- 1 security officer or firefighter attains the age of fifty-five years and has
2 completed at least three consecutive years of employment as a national
3 guard security officer or firefighter immediately preceding retirement.
- 4 c. Postponed retirement date is the first day of the month next following the
5 month in which the member, on or after July 1, 1977, actually severs or has
6 severed the member's employment after reaching the normal retirement date.
- 7 d. Early retirement date, except for a national guard security officer or firefighter,
8 is the first day of the month next following the month in which the member
9 attains the age of fifty-five years and has completed three years of eligible
10 employment. For a national guard security officer or firefighter, early
11 retirement date is the first day of the month next following the month in which
12 the national guard security officer or firefighter attains the age of fifty years
13 and has completed at least three years of eligible employment.
- 14 e. Disability retirement date is the first day of the month after a member
15 becomes permanently and totally disabled, according to medical evidence
16 called for under the rules of the board, and has completed at least one
17 hundred eighty days of eligible employment. For supreme and district court
18 judges, permanent and total disability is based solely on a judge's inability to
19 perform judicial duties arising out of physical or mental impairment, as
20 determined pursuant to rules adopted by the board or as provided by
21 subdivision a of subsection 3 of section 27-23-03. A member is eligible to
22 receive disability retirement benefits only if the member:
- 23 (1) Became disabled during the period of eligible employment; and
24 (2) Applies for disability retirement benefits within twelve months of the
25 date the member terminates employment.
- 26 A member is eligible to continue to receive disability benefits as long as the
27 permanent and total disability continues and the member submits the
28 necessary documentation and undergoes medical testing required by the
29 board, or for as long as the member participates in a rehabilitation program
30 required by the board, or both. If the board determines that a member no
31 longer meets the eligibility definition, the board may discontinue the disability

- 1 retirement benefit. The board may pay the cost of any medical testing or
2 rehabilitation services it deems necessary and these payments are
3 appropriated from the retirement fund for those purposes.
- 4 4. The board shall calculate retirement benefits as follows:
- 5 a. Normal retirement benefits for all retirees, except supreme and district court
6 judges, reaching normal retirement date equal an annual amount, payable
7 monthly, comprised of a service benefit and a prior service benefit, as defined
8 in this chapter, which is determined as follows:
- 9 (1) Service benefit equals two percent of final average salary multiplied by
10 the number of years of service employment.
- 11 (2) Prior service benefit equals two percent of final average salary
12 multiplied by the number of years of prior service employment.
- 13 b. Normal retirement benefits for all supreme and district court judges under the
14 public employees retirement system reaching normal retirement date equal
15 an annual amount, payable monthly, comprised of a benefit as defined in this
16 chapter, determined as follows:
- 17 (1) Benefits must be calculated from the time of appointment or election to
18 the bench and must equal three and one-half percent of final average
19 salary multiplied by the first ten years of judicial service, two and eighty
20 hundredths percent of final average salary multiplied by the second ten
21 years of judicial service, and one and one-fourth percent of final
22 average salary multiplied by the number of years of judicial service
23 exceeding twenty years.
- 24 (2) Service benefits must include, in addition, an amount equal to the
25 percent specified in subdivision a of final average salary multiplied by
26 the number of years of nonjudicial employee service and employment.
- 27 c. Postponed retirement benefits are calculated as for single life benefits for
28 those members who retired on or after July 1, 1977.
- 29 d. Early retirement benefits are calculated as for single life benefits accrued to
30 the date of termination of employment, but must be actuarially reduced to
31 account for benefit payments beginning prior to the normal retirement date,

- 1 which is the earlier of age sixty-five or the age at which current service plus
2 age equals eighty-five. A retiree, other than a supreme or district court judge,
3 is eligible for early retirement benefits only after having completed three years
4 of eligible employment. A supreme or district court judge retiree is eligible for
5 early retirement benefits only after having completed five years of eligible
6 employment.
- 7 e. Except for supreme and district court judges, disability retirement benefits are
8 twenty-five percent of the member's final average salary. Disability retirement
9 benefits for supreme and district court judges are seventy percent of final
10 average salary reduced by the member's primary social security benefits and
11 by any workers' compensation benefits paid. The minimum monthly disability
12 retirement benefit under this section is one hundred dollars.
- 13 ~~f. A participating member who is a vested permanent employee is entitled to~~
14 ~~purchase additional years of service credit to enable the member to qualify for~~
15 ~~the normal retirement date defined by subdivision a of subsection 3. The~~
16 ~~years of service purchased must be added to the years of service~~
17 ~~employment under paragraph 1 of subdivision a for calculating the service~~
18 ~~benefit.~~
- 19 5. Upon termination of employment after completing three years of eligible
20 employment, except for supreme and district court judges, who must complete five
21 years of eligible employment, but before normal retirement date, a member who
22 does not elect to receive early retirement benefits is eligible to receive deferred
23 vested retirement benefits payable commencing on the member's normal
24 retirement date equal to one hundred percent of the member's accrued single life
25 benefits.
- 26 6. If before retiring a member dies after completing three years of eligible
27 employment, except for supreme and district court judges, who must have
28 completed five years of eligible employment, the board shall pay the member's
29 account balance to the member's designated beneficiary as provided in this
30 subsection. If the member has designated an alternate beneficiary with the
31 surviving spouse's written consent, the board shall pay the member's account

- 1 balance to the named beneficiary. If the member has named more than one
2 primary beneficiary, the board shall pay the member's account balance to the
3 named primary beneficiaries in the percentages designated by the member or, if
4 the member has not designated a percentage for the beneficiaries, in equal
5 percentages. If one or more of the primary beneficiaries has predeceased the
6 member, the board shall pay the predeceased beneficiary's share to the remaining
7 primary beneficiaries. If there are no remaining primary beneficiaries, the board
8 shall pay the member's account balance to the contingent beneficiaries in the
9 same manner. If there are no remaining designated beneficiaries, the board shall
10 pay the member's account balance to the member's estate. If the member has not
11 designated an alternate beneficiary or the surviving spouse is the beneficiary, the
12 surviving spouse of the member may select a form of payment as follows:
- 13 a. If the member was a supreme or district court judge, the surviving spouse
14 may select one of the following optional forms of payment:
- 15 (1) A lump sum payment of the member's retirement account as of the date
16 of death.
- 17 (2) Payments as calculated for the deceased member as if the member
18 was of normal retirement age at the date of death, payable until the
19 spouse dies.
- 20 b. The surviving spouse of all other members may select one of the following
21 options:
- 22 (1) A lump sum payment of the member's retirement account as of the date
23 of death.
- 24 (2) Payments for sixty months as calculated for the deceased member as if
25 the member was of normal retirement age at the date of death.
- 26 (3) Payment of a monthly retirement benefit equal to fifty percent of the
27 deceased member's accrued single life retirement benefits until the
28 spouse dies.
- 29 (4) If the member dies on or after the member's normal retirement date, the
30 payment of a monthly retirement benefit equal to an amount that would
31 have been paid to the surviving spouse if the member had retired on

1 the day of the member's death and had selected a one hundred
2 percent joint and survivor annuity, payable until the spouse dies. A
3 surviving spouse who received a benefit under this subsection as of
4 July 31, 1995, is entitled to the higher of that person's existing benefit
5 or the equivalent of the accrued benefit available under the one
6 hundred percent joint and survivor provision as if the deceased
7 member were of normal retirement age, with the increase payable
8 beginning August 1, 1995.

9 7. If a member not coming under the provisions of subsection 6 terminates
10 employment because of death, permanent and total disability, or any voluntary or
11 involuntary reason prior to retirement, the member or the member's designated
12 beneficiary is entitled to the member's account balance at termination. The board
13 shall automatically refund a member's account balance if the member has
14 completed less than three years of eligible employment and was not a supreme or
15 district court judge. If the member was a supreme or district court judge, the board
16 shall automatically refund a member's account balance if the member completed
17 less than five years of eligible employment. A member may waive the refund if the
18 member submits a written statement to the board, within thirty days after
19 termination, requesting that the member's account balance remain in the fund.

20 8. The surviving spouse of a member receiving retirement benefits must be the
21 member's primary beneficiary unless there is no surviving spouse or the surviving
22 spouse designates an alternate beneficiary in writing. If a member receiving
23 retirement benefits or the member's surviving spouse receiving retirement benefits
24 dies before the total amount of benefits paid to either or both equals the amount of
25 the member's account balance at retirement, the difference must be paid to the
26 named beneficiary of the recipient or, if there is no named beneficiary, to the
27 recipient's estate.

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

30 a. Single life.

- 1 b. An actuarially equivalent joint and survivor option, with fifty percent or one
2 hundred percent options.
- 3 c. An actuarially equivalent level social security option, which is available only to
4 members who retire prior to attaining the age at which they may begin to
5 receive unreduced social security benefits.
- 6 d. Life with five-year or ten-year certain options.

7 Except for supreme and district court judges, unless a member specifically
8 requests that the member receive benefits according to one of these options at the
9 time of applying for retirement, all retirement benefits must be in the form of a
10 single life benefit. For supreme and district court judges, unless a member
11 specifically requests that the member receive benefits according to one of these
12 options at the time of applying for retirement, all retirement benefits must be in the
13 form of a lifetime monthly pension with fifty percent of the benefit continuing for the
14 life of the surviving spouse, if any.

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

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

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

29 **SECTION 9. AMENDMENT.** Section 54-52-17.2 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **54-52-17.2. Multiple plan membership - Eligibility for benefits - Amount of**
2 **benefits.**

3 1. a. For the purpose of determining eligibility for benefits under this chapter, an
4 employee's years of service employment credit is the total of the years of
5 service employment credit earned in the public employees retirement system
6 and the years of service credit earned in any number of the following:

- 7 (1) The teachers' fund for retirement.
8 (2) The highway patrolmen's retirement system.
9 (3) The teachers' insurance and annuity association of America - college
10 retirement equities fund (TIAA-CREF), for service credit earned while
11 employed by North Dakota institutions of higher education.

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

13 b. ~~If an employee terminates eligible employment under the system, if that~~
14 ~~employee has not received a refund of the employee's account balance, and~~
15 ~~if the employee begins eligible employment in a plan described in~~
16 ~~paragraph 1, 2, or 3 of subdivision a, that employee may elect to remain an~~
17 ~~inactive member of the system without refund of the employee's account~~
18 ~~balance. The election must be made within ninety days after beginning the~~
19 ~~eligible employment. The board shall terminate the inactive status of an~~
20 ~~employee under this subdivision if the employee gains eligible employment~~
21 ~~under this chapter or if the employee terminates eligible employment under a~~
22 ~~plan described in paragraph 1, 2, or 3 of subdivision a.~~

23 e. ~~An~~ Pursuant to rules adopted by the board, an employee who has service
24 credit in the system and in any ~~number~~ of the plans described in
25 paragraphs 1; and 2, and 3 of subdivision a is entitled to benefits under this
26 chapter ~~calculated by using the certified salaries of the retirement plan of last~~
27 ~~membership. The employee may elect to have benefits calculated using the~~
28 benefit formula in section 54-52-17 under either of the following methods:

- 29 (1) The average of the highest salary received by the member for any
30 thirty-six months employed during the last one hundred twenty months
31 of employment in the public employees retirement system. If the

1 participating member has worked for less than thirty-six months at
2 retirement, the final average salary is the average salary for the total
3 months of employment.

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

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

12 2. a. If an employee, who is a participating member, is also employed in any
13 position where membership in the teachers' fund for retirement is required,
14 then for purposes of current employment the employee is a member of the
15 retirement system in which the employee has the most years of service
16 employment. If the employee has an equal amount of service in both the
17 public employees retirement system and the teachers' fund for retirement, the
18 employee is a member of the public employees retirement system. The
19 board of trustees of the teachers' fund for retirement and the state retirement
20 board shall jointly certify to the appropriate employers of the employee the
21 fact of the beginning and termination of eligibility for dual membership in the
22 respective retirement systems and the retirement system to which the
23 employee is required to be a member under this subsection. The employers
24 upon receipt of this certification shall pay over to that retirement system the
25 member assessments and employer contributions at the rates currently
26 existing for that retirement system. If the employee is required to be a
27 member of the teachers' fund for retirement, the board, at the employee's
28 election, shall designate the employee an inactive member of the public
29 employees retirement system until the employee ceases the employment
30 which requires membership in both the public employees retirement system
31 and the teachers' fund for retirement who is eligible to participate in the public

1 employees retirement system is also employed in any position when
2 membership in an alternate retirement system is required, then, for purposes
3 of current participation, the employee is a member of each applicable
4 retirement system. The employer shall pay over to each retirement system
5 the member assessment and employer contributions at the rates currently
6 existing for that retirement system.

7 b. If an employee described in subdivision a was employed prior to August 1,
8 2003, and has dual membership rights, the employee may elect to begin
9 participation in the alternate plan pursuant to the plan provisions on August 1,
10 2003, or may continue participation according to the plan provisions in effect
11 on July 31, 2003. An employee's election under this subdivision is ineffective
12 unless delivered to the public employees retirement system administrative
13 offices by five p.m. on October 31, 2003. If an election is not received by the
14 public employees retirement system, the participation and benefit calculation
15 requirements in effect on July 31, 2003, apply to that employee.

16 ~~3. Under rules adopted by the board, an individual whose service credit was canceled~~
17 ~~when that individual received a refund of assessments at termination of~~
18 ~~employment under this chapter may, while that individual participates in a plan~~
19 ~~described in paragraph 1, 2, or 3 of subdivision a of subsection 1, repurchase that~~
20 ~~service credit that was canceled.~~

21 **SECTION 10.** A new subsection to section 54-52-17.4 of the North Dakota Century
22 Code is created and enacted as follows:

23 In addition to service credit identified in this section, a vested member may
24 purchase up to five years of service credit unrelated to any other eligible service.

25 **SECTION 11. AMENDMENT.** Section 54-52-17.4 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **54-52-17.4. (Contingent effective date and expiration date - See note) Purchase of**
28 **additional credit.**

29 1. A member may elect to purchase credit for years of service and prior service for
30 which the member is not presently receiving credit. A member is entitled to
31 purchase additional credit under this section for the following service or prior

- 1 service, except this service is not eligible for credit if the years claimed also qualify
2 for retirement benefits from another retirement system:
- 3 a. Active employment in the armed forces of the United States, except as
4 provided in subsection 5, for up to four years of credit.
- 5 b. Employment as a permanent employee by a ~~governmental unit that does not~~
6 ~~participate in the public employees retirement system under this chapter~~
7 employer either within or outside the state of North Dakota.
- 8 c. Employment as a permanent employee by a political subdivision participating
9 in the public employees retirement system which did not pay the cost of past
10 service benefits under section 54-52-02.1.
- 11 d. Service the participating member did not elect to repurchase upon
12 reemployment under section 54-52-02.6.
- 13 e. Service of an eligible employee, who exercised the privilege to withdraw from
14 the predecessor plan to the public employees retirement system under
15 subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of
16 the 1977 Session Laws.
- 17 f. ~~Employment as a permanent employee of a governmental unit not located in~~
18 ~~North Dakota.~~
- 19 ~~g.~~ Employment as a permanent employee by the federal government.
- 20 2. A participating member may elect to purchase credit for the following absences for
21 which the participating member is not receiving service credit:
- 22 a. Employer-approved leave of absence; or
23 b. Months away from work while participating as a seasonal employee.
- 24 3. Supreme and district court judges under the public employees retirement system
25 may elect to purchase credit for the following years of service:
- 26 a. Except as provided in subsection 5, for up to four years of credit for active
27 employment in the armed forces of the United States.
- 28 b. As a county judge in a county or counties that did not participate in the public
29 employees retirement system under this chapter.
- 30 c. Participation in the public employees retirement system as a county judge
31 may be converted to credit in the judges retirement system.

- 1 4. The member may purchase credit under this section, or the member's employer
2 may purchase for the member, by paying to the board an amount equal to the
3 actuarial cost to the fund of providing the credit. If the member purchases credit
4 pursuant to subdivision d of subsection 1, the member must pay to the board an
5 amount equal to the greater of the actuarial cost to the fund of providing the credit,
6 or the amount the member received upon taking a refund of the member's account
7 balance, plus interest at the actuarial rate of return from the time the member was
8 issued the refund. If the member is not repurchasing all of the credit originally
9 refunded, the member must pay a pro rata amount of the refunded amount
10 determined by dividing the refunded amount by the number of months of credit
11 refunded, multiplying that amount times the number of months of credit the
12 member seeks to repurchase, and adding interest at the actuarial rate of return.
13 The member or the member's employer shall also pay to the retiree health benefits
14 fund established under section 54-52.1-03.2 an amount equal to the actuarial cost
15 to that fund for the additional credit. This contribution must be recorded as a
16 member contribution pursuant to section 54-52.1-03.2. The board shall adopt
17 rules governing the purchase of additional credit under this section.
- 18 5. A participating member, or a member not presently under covered employment,
19 may request credit for qualified military service pursuant to the Uniformed Services
20 Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat.
21 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with
22 proof of eligible military service to the board in order to receive credit for military
23 service. For credit on and after July 1, 1966, the member must pay four percent
24 times the ~~member's most recent monthly salary~~ the member would have received
25 but for the period of service or, if that amount is not reasonably certain, the
26 member's average rate of compensation during the twelve-month period
27 immediately preceding the member's period of service or, if shorter, the period of
28 employment immediately preceding that period, times the number of months of
29 credit being purchased, ~~plus interest at a rate determined by the board.~~ If the
30 member makes the above payment, the governmental unit, or, in the case of a
31 member not under covered employment, the last employing governmental unit,

1 shall pay four and twelve-hundredths percent times the salary the member would
2 have received but for the period of service or, if that amount is not reasonably
3 certain, the member's average rate of compensation during the twelve-month
4 period immediately preceding the member's period of service or, if shorter, the
5 period of employment immediately preceding that period, times the number of
6 months of credit being purchased. In addition, the governmental unit, or in the
7 case of a member not under covered employment the last employing
8 governmental unit, shall pay to the retiree health benefits fund established under
9 section 54-52.1-03.2 one percent times the ~~member's present monthly~~ salary the
10 member would have received but for the period of service or, if that amount is not
11 reasonably certain, the member's average rate of compensation during the
12 twelve-month period immediately preceding the member's period of service or, if
13 shorter, the period of employment immediately preceding that period, times the
14 member's months of credit being purchased. For credit before July 1, 1966, no
15 contribution is required.

16 **(Contingent effective date and expiration date - See note) Purchase of additional**
17 **credit.**

- 18 1. A member may elect to purchase credit for years of service and prior service for
19 which the member is not presently receiving credit. A member is entitled to
20 purchase additional credit under this section for the following service or prior
21 service, except this service is not eligible for credit if the years claimed also qualify
22 for retirement benefits from another retirement system:
- 23 a. Active employment in the armed forces of the United States, except as
24 provided in subsection 5, for up to four years of credit.
 - 25 b. Employment as a permanent employee by a ~~governmental unit that does not~~
26 ~~participate in the public employees retirement system under this chapter~~
27 employer either within or outside the state of North Dakota.
 - 28 c. Employment as a permanent employee by a political subdivision participating
29 in the public employees retirement system which did not pay the cost of past
30 service benefits under section 54-52-02.1.

- 1 d. Service the participating member did not elect to repurchase upon
- 2 reemployment under section 54-52-02.6.
- 3 e. Service of an eligible employee, who exercised the privilege to withdraw from
- 4 the predecessor plan to the public employees retirement system under
- 5 subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of
- 6 the 1977 Session Laws.
- 7 f. ~~Employment as a permanent employee of a governmental unit not located in~~
- 8 ~~North Dakota.~~
- 9 g. Employment as a permanent employee by the federal government.
- 10 2. A participating member may elect to purchase credit for the following absences for
- 11 which the participating member is not receiving service credit:
- 12 a. Employer-approved leave of absence; or
- 13 b. Months away from work while participating as a seasonal employee.
- 14 3. Supreme and district court judges under the public employees retirement system
- 15 may elect to purchase credit for the following years of service:
- 16 a. Except as provided in subsection 5, for up to four years of credit for active
- 17 employment in the armed forces of the United States.
- 18 b. As a county judge in a county or counties that did not participate in the public
- 19 employees retirement system under this chapter.
- 20 c. Participation in the public employees retirement system as a county judge
- 21 may be converted to credit in the judges retirement system.
- 22 4. The member may purchase credit under this section, or the member's employer
- 23 may purchase for the member, by paying to the board an amount equal to the
- 24 actuarial cost to the fund of providing the credit. If the member purchases credit
- 25 pursuant to subdivision d of subsection 1, the member must pay to the board an
- 26 amount equal to the greater of the actuarial cost to the fund of providing the credit,
- 27 or the amount the member received upon taking a refund of the member's account
- 28 balance, plus interest at the actuarial rate of return from the time the member was
- 29 issued the refund. If the member is not repurchasing all of the credit originally
- 30 refunded, the member must pay a pro rata amount of the refunded amount
- 31 determined by dividing the refunded amount by the number of months of credit

1 refunded, multiplying that amount times the number of months of credit the
2 member seeks to repurchase, and adding interest at the actuarial rate of return.
3 The member or the member's employer shall also pay to the retiree health benefits
4 fund established under section 54-52.1-03.2 an amount equal to the actuarial cost
5 to that fund for the additional credit. This contribution must be recorded as a
6 member contribution pursuant to section 54-52.1-03.2. The board shall adopt
7 rules governing the purchase of additional credit under this section.

8 5. A participating member, or a member not presently under covered employment,
9 may request credit for qualified military service pursuant to the Uniformed Services
10 Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat.
11 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with
12 proof of eligible military service to the board in order to receive credit for military
13 service. For credit on and after July 1, 1966, the member must pay four percent
14 times the ~~member's most recent monthly salary~~ the member would have received
15 but for the period of service or, if that amount is not reasonably certain, the
16 member's average rate of compensation during the twelve-month period
17 immediately preceding the member's period of service or, if shorter, the period of
18 employment immediately preceding that period, times the number of months of
19 credit being purchased, ~~plus interest at a rate determined by the board.~~ If the
20 member makes the above payment, the governmental unit, or, in the case of a
21 member not under covered employment, the last employing governmental unit,
22 shall pay four and twelve-hundredths percent times the salary the member would
23 have received but for the period of service or, if that amount is not reasonably
24 certain, the member's average rate of compensation during the twelve-month
25 period immediately preceding the member's period of service or, if shorter, the
26 period of employment immediately preceding that period, times the number of
27 months of credit being purchased. In addition, the governmental unit, or in the case
28 of a member not under covered employment the last employing governmental unit,
29 shall pay to the retiree health benefits fund established under section 54-52.1-03.2
30 one percent times the ~~member's present monthly salary~~ the member would have
31 received but for the period of service or, if that amount is not reasonably certain,

1 the member's average rate of compensation during the twelve-month period
2 immediately preceding the member's period of service or, if shorter, the period of
3 employment immediately preceding that period, times the member's months of
4 credit being purchased. For credit before July 1, 1966, no contribution is required.

5 6. Pursuant to rules by the board, the board may allow a member to purchase service
6 credit with either pretax or aftertax moneys, at the board's discretion. If the
7 member elects to purchase service credit using pretax moneys, the requirements
8 and restrictions in subsection 3 of section 54-52-05 apply to the purchase
9 arrangement.

10 **SECTION 12.** A new section to chapter 54-52 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Internal Revenue Code compliance.** The board shall administer the plan in
13 compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of
14 the Internal Revenue Code as it applies for governmental plans.

15 **SECTION 13.** A new section to chapter 54-52 of the North Dakota Century Code is
16 created and enacted as follows:

17 **Employer service purchases.** A participating employer may purchase additional
18 service credit on behalf of a member under the following conditions:

19 1. The member may not be given the option to choose between an employer service
20 purchase and an equivalent amount paid in cash.

21 2. The member must meet one of the following conditions at the time the purchase is
22 made:

23 a. The member's age plus service credit must be equal to or greater than
24 seventy-five; or

25 b. The member's age must be at least fifty-five and the member must have at
26 least three years of service credit.

27 3. The board must determine the purchase price on an actuarially equivalent basis.

28 4. The purchase must be completed before the member's retirement.

29 5. The employer may purchase a maximum of five years of service credit on behalf of
30 the member.

1 6. The employer must pay the purchase price for the service credit purchased under
2 this section in a lump sum.

3 **SECTION 14.** Three new subsections to section 54-52-26 of the North Dakota Century
4 Code are created and enacted as follows:

5 Beneficiaries designated by a participating member or a former participating
6 member to receive benefits after the member's death, but only after the member's
7 death. Information relating to beneficiaries may be disclosed to other beneficiaries
8 of the same member.

9 The general public, but only after the board has been unable to locate the member
10 for a period in excess of two years, and limited to the member's name and the fact
11 that the board has been unable to locate the member.

12 Any person if the board determines disclosure is necessary for treatment,
13 operational, or payment purposes, including the completion of necessary
14 documents.

15 **SECTION 15. AMENDMENT.** Section 54-52-27 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **54-52-27. ~~Conversion~~ Purchase of sick leave credit.** At termination of eligible
18 employment a member is entitled to credit in the retirement system for each month of unused
19 sick leave, as certified by the member's employer, if the member or the member's employer
20 pays an amount equal to the member's final average salary, times the number of months of sick
21 leave converted, times the percent of employer and employee contributions to the retirement
22 program of the member, plus one percent for the retiree health benefits program. Hours of sick
23 leave equal to a fraction of a month are deemed to be a full month for purposes of conversion
24 to service credit. A member may convert all of the member's certified sick leave or a part of the
25 member's certified sick leave. All conversion payments must be made within sixty days of
26 termination of employment and before the member receives a retirement annuity unless the
27 member has submitted an approved payment plan to the board.

28 **SECTION 16. AMENDMENT.** Subsection 1 of section 54-52.1-03.3 of the North
29 Dakota Century Code is amended and reenacted as follows:

- 1 1. The following persons are entitled to receive credit for hospital and medical
2 benefits coverage under subsection 2:
- 3 a. A member or surviving spouse of the highway patrolmen's retirement system
4 receiving retirement benefits, ~~or the surviving spouse of a member of the~~
5 highway patrolmen's retirement system ~~who was eligible to receive or was~~
6 receiving retirement benefits, ~~under section 39-03.1-14~~ is eligible for the credit
7 beginning on the date retirement benefits are effective unless the premium is
8 billed to the employer.
- 9 b. A member or surviving spouse of the public employees retirement system
10 receiving retirement benefits, ~~or the surviving spouse of a member of the~~
11 public employees retirement system ~~who was eligible to receive or was~~
12 receiving retirement benefits, ~~under section 54-52-17~~ is eligible for the credit
13 beginning on the date retirement benefits are effective unless the premium is
14 billed to the employer.
- 15 c. A member or surviving spouse of the retirement program established by job
16 service North Dakota under section 52-11-01 receiving retirement benefits, ~~or~~
17 the surviving spouse of a member of that retirement program ~~who was eligible~~
18 to receive or was receiving retirement benefits, ~~under the plan provisions of~~
19 that retirement program is eligible for the credit beginning on the date
20 retirement benefits are effective unless the premium is billed to the employer.
- 21 d. A retired judge or surviving spouse receiving retirement benefits under the
22 retirement program established under chapter 27-17, ~~or the surviving spouse~~
23 of a retired judge ~~who was eligible to receive or was receiving retirement~~
24 benefits, ~~under section 27-17-04~~ is eligible for the credit beginning on the date
25 retirement benefits are effective unless the premium is billed to the employer.
- 26 e. A former participating member of the defined contribution retirement plan
27 receiving retirement benefits, ~~or the surviving spouse of a former participating~~
28 member of that retirement plan ~~who was eligible to receive or was receiving~~
29 benefits, ~~under section 54-52.6-13~~, is eligible as determined by the board
30 pursuant to its rules.

1 **SECTION 17.** Section 54-52.2-03.3 of the North Dakota Century Code is created and
2 enacted as follows:

3 **54-52.2-03.3. Benefit payments to alternate payee under qualified domestic**
4 **relations order.**

- 5 1. The board or a vendor contracted for by the board shall apportion a participating
6 member's account in the deferred compensation plan under this chapter in
7 accordance with the applicable requirements of any qualified domestic relations
8 order. The board shall review a domestic relations order submitted to the board to
9 determine if the domestic relations order is qualified under this section and
10 pursuant to the plan document established by the board for determining the
11 qualified status of domestic relations orders and administering distributions under
12 the qualified orders.
- 13 2. A "qualified domestic relations order" for purposes of this section means any
14 judgment, decree, or order, including approval of a property settlement agreement,
15 which relates to the provision of child support, spousal support, or marital property
16 rights to a spouse, former spouse, child, or other dependent of a participating
17 member, is made pursuant to a North Dakota domestic relations law, and which
18 creates or recognizes the existence of an alternate payee's right to, or assigns to
19 an alternate payee the right to, receive all or a part of the benefits payable to the
20 participating member. A qualified domestic relations order may not require the
21 board to provide any type or form of benefit, or any option, not otherwise provided
22 under this chapter, or to provide increased benefits. A qualified domestic relations
23 order must specify:
- 24 a. The name and the last-known mailing address of the participating member
25 and the name and mailing address of each alternate payee covered by the
26 order;
- 27 b. The amount or percentage of the participating member's benefits to be paid
28 by the plan to each alternate payee;
- 29 c. That the alternate payee must take a lump sum payment of the benefits
30 allocated to the alternate payee within one hundred twenty days of the later of

1 the board's acceptance of the qualified domestic relations order or the entry of
2 the order by the court; and

3 d. Each plan to which the order applies.

4 **SECTION 18.** A new section to chapter 54-52.6 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Additional employer contributions.** Additional lump sum contributions by an
7 employer to a participating member's defined contribution retirement plan account may be
8 made if the participating member has twenty-five years of service, has not retired, and has not
9 received a retirement benefit under this chapter. Contributions may be made in an amount
10 actuarially equivalent to the amounts determined pursuant to chapter 54-52 as follows:

- 11 1. For the conversion of sick leave pursuant to section 54-52-27;
- 12 2. The equivalent of up to five years of service credit unrelated to any other eligible
13 service as provided in subsection 5 of section 13 of this Act.

14 **SECTION 19.** A new section to chapter 54-52.6 of the North Dakota Century Code is
15 created and enacted as follows:

16 **Contributions for military service.** A participating member, or a member not
17 presently under covered employment, may request credit and contributions for qualified military
18 service pursuant to the Uniformed Services Employment and Reemployment Rights Act of
19 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a
20 qualified application with proof of eligible military service to the board in order to receive credit
21 for military service. For credit on and after July 1, 1966, the member must pay four percent
22 times the salary the member would have received but for the period of service or, if that amount
23 is not reasonably certain, the member's average rate of compensation during the twelve-month
24 period immediately preceding the member's period of service or, if shorter, the period of
25 employment immediately preceding such period, times the number of months for which the
26 member is making contributions. If the member makes the above payment, the governmental
27 unit, or, in the case of a member not under covered employment, the last employing
28 governmental unit, shall pay four and twelve-hundredths percent times the salary the member
29 would have received but for the period of service or, if that amount is not reasonably certain,
30 the member's average rate of compensation during the twelve-month period immediately
31 preceding the member's period of service or, if shorter, the period of employment immediately

1 preceding such period, times the number of months for which the member made contributions.
2 In addition, the governmental unit, or in the case of a member not under covered employment
3 the last employing governmental unit, shall pay to the retiree health benefits fund established
4 under section 54-52.1-03.2 one percent times the salary the member would have received but
5 for the period of service or, if that amount is not reasonably certain, the member's average rate
6 of compensation during the twelve-month period immediately preceding the member's period of
7 service or, if shorter, the period of employment immediately preceding that period, times the
8 member's months for which the member made contributions. For credit before July 1, 1966, no
9 contribution is required.

10 **SECTION 20. AMENDMENT.** Section 54-52.2-06 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **54-52.2-06. Deferred compensation program - Benefits - Taxation - Exemption**
13 **from judicial process - Assignment.** The deferred compensation program established by this
14 chapter shall exist and serve in addition to retirement, pension, or benefit systems established
15 by the state, county, city, town, or other political subdivision, and no deferral of income under
16 the deferred compensation program shall effect a reduction of any retirement, pension, or other
17 benefit provided by law. However, any sum deferred under the deferred compensation
18 program is not subject to taxation until distribution is actually made to the employee. Any
19 unpaid benefits under the deferred compensation program established by this chapter are not
20 subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws,
21 or other process of law whatsoever, except as provided by section 54-52.2-03.3. Neither the
22 employee, the employee's beneficiary, nor any designee of the employee or the employee's
23 beneficiary has the right to commute, sell, assign, transfer, or otherwise convey the right to
24 receive payments under this chapter.

25 **SECTION 21. AMENDMENT.** Subsection 4 of section 54-52.6-13 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 4. If the former participating member's vested account balance is less than five
28 thousand dollars, the board shall automatically refund the member's vested
29 account balance upon termination of employment. The member may waive the
30 refund if the member submits a written statement to the board, within ~~thirty~~ thirty one

1 hundred twenty days after termination, requesting that the member's vested
2 account balance remain in the plan.

3 **SECTION 22. REPEAL.** Section 54-52-17.8 of the North Dakota Century Code is
4 repealed.