

FIRST ENGROSSMENT

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2059

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 two new sections to chapter 39-03.1 of the North Dakota
2 Century Code, relating to Internal Revenue Code compliance and employer service purchases
3 under the highway patrolmen's retirement system; to amend and reenact section 39-03.1-08.2,
4 subsection 2 of section 39-03.1-09, and sections 39-03.1-14.1 and 39-03.1-28 of the North
5 Dakota Century Code, relating to the purchase of additional service credit, employer payment
6 of employee contributions multiple plan membership, and confidentiality requirements under the
7 highway patrolmen's retirement system; and to repeal section 39-03.1-11.1 of the North Dakota
8 Century Code, relating to benefit limitations under the highway patrolmen's retirement system.

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

10 **SECTION 1. AMENDMENT.** Section 39-03.1-08.2 of the North Dakota Century Code
11 is amended and reenacted as follows:

12 **39-03.1-08.2. (Contingent expiration date - See note) Purchase of additional**
13 **service credit.**

- 14 1. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules
15 adopted by the board for the purchase of additional service credit, but only to the
16 extent the transfer is a rollover contribution that meets the requirement of
17 section 408 of the Internal Revenue Code [26 U.S.C. 408].
- 18 2. Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled
19 to purchase additional credit under this section for active employment in the armed
20 forces of the United States, for up to four years of credit, if the contributor is not
21 presently receiving credit for that service. A contributor may not purchase credit
22 under this subsection if the years claimed also qualify for retirement benefits from
23 another retirement system.

- 1 3. A contributor may elect to purchase credit for an employer-approved leave of
2 absence if the contributor is not presently receiving credit for that absence.
- 3 4. ~~A participating contributor who is a vested permanent employee is entitled to~~
4 ~~purchase additional years of service credit for purposes of subsection 4 of section~~
5 ~~39-03.1-11 and to enable the contributor to qualify for the normal retirement date~~
6 ~~defined by subdivision b of subsection 3 of section 39-03.1-11. The board may~~
7 ~~accept trustee-to-trustee transfers as permitted by Internal Revenue Code section~~
8 ~~403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b)~~
9 ~~annuity or Internal Revenue Code section 457 deferred compensation plan for the~~
10 ~~purchase of permissive service credit, as defined in Internal Revenue Code section~~
11 ~~415(n)(3)(A), or as repayment of a cashout from a governmental plan under~~
12 ~~Internal Revenue Code section 415(k)(3).~~
- 13 5. The contributor may purchase credit under this section by paying to the board an
14 amount equal to the actuarial cost to the fund of providing the credit. The board
15 shall adopt rules governing the purchase of additional credit under this section.
- 16 6. The board may establish individual retirement accounts and individual retirement
17 annuities as permitted under section 408(q) of the Internal Revenue Code to allow
18 employees to make voluntary employee contributions. The board may adopt
19 appropriate rules as may be necessary to implement and administer the accounts
20 and annuities under this section.
- 21 7. In addition to service credit identified in this section, a vested member may
22 purchase up to five years of service credit.

23 **(Contingent effective date - See note) Purchase of additional service credit.**

- 24 1. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules
25 adopted by the board for the purchase of additional service credit, but only to the
26 extent the transfer is a rollover contribution that meets the requirement of
27 section 408 of the Internal Revenue Code [26 U.S.C. 408].
- 28 2. Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled
29 to purchase additional credit under this section for active employment in the armed
30 forces of the United States, for up to four years of credit, if the contributor is not
31 presently receiving credit for that service. A contributor may not purchase credit

- 1 under this subsection if the years claimed also qualify for retirement benefits from
2 another retirement system.
- 3 3. A contributor may elect to purchase credit for an employer-approved leave of
4 absence if the contributor is not presently receiving credit for that absence.
- 5 4. ~~A participating contributor who is a vested permanent employee is entitled to~~
6 ~~purchase additional years of service credit for purposes of subsection 4 of section~~
7 ~~39-03.1-11 and to enable the contributor to qualify for the normal retirement date~~
8 ~~defined by subdivision b of subsection 3 of section 39-03.1-11.~~ The board may
9 accept trustee-to-trustee transfers as permitted by Internal Revenue Code section
10 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b)
11 annuity or Internal Revenue Code section 457 deferred compensation plan for the
12 purchase of permissive service credit, as defined in Internal Revenue Code section
13 415(n)(3)(A), or as repayment of a cashout from a governmental plan under
14 Internal Revenue Code section 415(k)(3).
- 15 5. The contributor may purchase credit under this section by paying to the board an
16 amount equal to the actuarial cost to the fund of providing the credit. The board
17 shall adopt rules governing the purchase of additional credit under this section.
- 18 6. The board may establish individual retirement accounts and individual retirement
19 annuities as permitted under section 408(q) of the Internal Revenue Code to allow
20 employees to make voluntary employee contributions. The board may adopt
21 appropriate rules as may be necessary to implement and administer the accounts
22 and annuities under this section.
- 23 7. In addition to service credit identified in this section, a member may purchase up to
24 five years of service credit.
- 25 8. Pursuant to rules adopted by the board, the board may allow a member to
26 purchase service credit with either pretax or aftertax moneys, at the board's
27 discretion. If a member elects to purchase service credit using pretax moneys, the
28 requirements and restrictions in subsection 2 of section 39-03.1-09 apply to the
29 purchase arrangement.

30 **SECTION 2. AMENDMENT.** Subsection 2 of section 39-03.1-09 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 2. The state of North Dakota, at its option, may pay the member contributions
2 required by subsection 1 for all compensation earned after June 30, 1983, and
3 may pay the member contributions required to purchase service credit on a pretax
4 basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid ~~shall~~
5 must be paid by the state in lieu of contributions by the member. A member may
6 not receive the contributed amounts directly once the employer has elected to pay
7 the member contributions. If the state decides not to pay the contributions, the
8 amount that would have been paid will continue to be deducted from
9 compensation. If contributions are paid by the state, they must be treated as
10 employer contributions in determining tax treatment under this code and the
11 federal Internal Revenue Code. If contributions are paid by the state, they must
12 not be included as gross income of the member in determining tax treatment under
13 this code and the Internal Revenue Code until they are distributed or made
14 available. The state shall pay these member contributions from the same source
15 of funds used in paying compensation to the members. The state shall pay these
16 contributions by effecting an equal cash reduction in the gross salary of the
17 employee or by an offset against future salary increases or by a combination of a
18 reduction in gross salary and offset against future salary increases. If member
19 contributions are paid by the state, they must be treated for the purposes of this
20 chapter in the same manner and to the same extent as member contributions
21 made prior to the date the contributions were assumed by the state. The option
22 given employers by this subsection must be exercised in accordance with rules
23 adopted by the board.

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

26 **Employer service purchases.** An employer may purchase additional service
27 credit on behalf of a contributor under the following conditions:

- 28 1. The contributor may not be given the option to choose between an employer
29 service purchase and an equivalent amount paid in cash.
30 2. The contributor must meet one of the following conditions at the time the purchase
31 is made:

- 1 a. The contributor's age plus service credit must be equal to or greater than
- 2 seventy; or
- 3 b. The contributor's age must be at least fifty and the contributor must have at
- 4 least ten years of service credit.
- 5 3. The board must determine the purchase price on an actuarilly equivalent basis.
- 6 4. The purchase must be completed before the contributor's retirement.
- 7 5. The employer may purchase a maximum of five years of service credit on behalf of
- 8 the contributor.
- 9 6. The employer must pay the purchase price for the service credit purchased under
- 10 this section in a lump sum.

11 **SECTION 4.** A new section to chapter 39-03.1 of the North Dakota Century Code is
12 created and enacted as follows:

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

16 **SECTION 5. AMENDMENT.** Section 39-03.1-14.1 of the North Dakota Century Code
17 is amended and reenacted as follows:

18 **39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of**
19 **benefits.**

- 20 1. a. For the purpose of determining eligibility for benefits under this chapter, a
- 21 member's years of service is the total of the years of service earned under
- 22 this chapter and the years of service employment or years of service credit
- 23 earned in any number of the following, the total of which may not exceed
- 24 twelve months of credit per year:
- 25 ~~(1)~~ a. The public employees retirement system.
- 26 ~~(2)~~ b. The teachers' fund for retirement.
- 27 c. The teachers' insurance and annuity association of America - college
- 28 retirement equities fund (TIAA-CREF), for service credit earned while
- 29 employed by North Dakota institutions of higher education.
- 30 ~~b.~~ 2. If a member terminates eligible employment under this chapter, if that member has
- 31 not received a refund of the member's accumulated deductions, and if that

1 member begins eligible employment in a plan described in ~~paragraph 1~~
2 subdivision a or 2 b of subdivision a subsection 1, that member may elect to
3 remain an inactive member of the system without refund of the member's
4 accumulated deductions. The election must be made within ninety days after
5 beginning the eligible employment ~~or by October 1, 1987, whichever is later~~. The
6 board shall terminate the inactive status of a member under this subdivision if the
7 member gains eligible employment under this chapter or if the member terminates
8 eligible employment under a plan described in ~~paragraph 1~~ subdivision a or 2 b of
9 subdivision a subsection 1.

10 e. 3. Pursuant to rules adopted by the board, a member who has service credit in the
11 system and in any number of the alternate plans described in paragraphs 1 and 2
12 subdivision a or b of subdivision a subsection 1 is entitled to benefits under this
13 chapter. ~~The employee may elect to have benefits calculated by using the~~
14 ~~certified salaries of the retirement plan of last membership~~ using the benefit
15 formula in section 39-03.1-11 under either of the following calculation methods:

16 a. By using the average of the highest salary received by the member for any
17 consecutive thirty-six months employed during the last one hundred twenty
18 months of employment in the highway patrolmen's retirement system. If the
19 participating member has worked for less than thirty-six months at retirement,
20 the final average salary is the average salary for the total months of
21 employment.

22 b. Using the average of the highest salary received by the member for any
23 thirty-six consecutive months during the last one hundred twenty months of
24 employment, with service credit not to exceed one month in any month when
25 combined with the service credit earned in the alternate retirement system.

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

28 ~~2. Under rules adopted by the board, an individual whose service credit was canceled~~
29 ~~when that individual received a refund of assessments at termination of~~
30 ~~employment under this chapter may, while that individual participates in a plan~~

1 ~~described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that~~
2 ~~service credit that was canceled.~~

3 **SECTION 6. AMENDMENT.** Section 39-03.1-28 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **39-03.1-28. Confidentiality of records.** ~~Information pertaining to a contributor's~~
6 ~~accumulated deductions, disability applications and benefits, and surviving spouse applications~~
7 ~~and benefits under this chapter is confidential and is not a public record. All records relating to~~
8 ~~the retirement benefits of a member or a beneficiary under this chapter are confidential and are~~
9 ~~not public records.~~ The information and records may be disclosed, under rules adopted by the
10 board only to:

- 11 1. A person to whom the ~~contributor~~ member has given written consent to have the
12 information disclosed.
- 13 2. A person legally representing the ~~contributor~~ member, upon proper proof of
14 representation, and unless the ~~contributor~~ member specifically withholds consent.
- 15 3. A person authorized by a court order.
- 16 4. A member's participating employer, limited to information concerning the member's
17 years of service credit and years of age. The board may share other types of
18 information as needed by the employer to validate the employer's compliance with
19 existing state or federal laws. Any information provided to the member's
20 participating employer under this subsection must remain confidential except as
21 provided under subsection 6.
- 22 5. The administrative staff of the retirement and investment office for purposes
23 relating to membership and benefits determination.
- 24 6. State or federal agencies for purposes of reporting on a service provider's
25 provision of services or when the employer must supply information to an agency
26 to validate the employer's compliance with existing state or federal laws.
- 27 7. Member interest groups approved by the board on a third-party blind list basis,
28 limited to information concerning the member's participation, name, and address.
- 29 8. The member's spouse or former spouse, that individual's legal representative, and
30 the judge presiding over the member's dissolution proceeding for purposes of
31 aiding the parties in drafting a qualified domestic relations order under section

1 39-03.1-14.2. The information disclosed under this subsection must be limited to
2 information necessary for drafting the order.

3 9. Beneficiaries designated by a participating member or a former participating
4 member to receive benefits after the member's death, but only after the member's
5 death.

6 10. Any person if the board determines disclosure is necessary for treatment,
7 operational, or payment purposes, including the completion of necessary
8 documents.

9 **SECTION 7. REPEAL.** Section 39-03.1-11.1 of the North Dakota Century Code is
10 repealed.