Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1069

Introduced by

Government and Veterans Affairs Committee

(At the request of the Public Employees Retirement System)

A BILL for an Act to create and enact a new subsection to section 54-52.6-02 of the North Dakota Century Code, relating to temporary employee participation in the defined contribution retirement plan under the public employees retirement system; to amend and reenact subsection 3 of section 39-03.1-10.1, subsection 9 of section 39-03.1-11, sections 39-03.1-11.2, 39-03.1-28, and 39-03.1-30, subsection 11 of section 54-52-01, subsections 9 and 10 of section 54-52-17, subsection 5 of section 54-52-17.4, section 54-52-28, subsection 3 of section 54-52.6-01, and sections 54-52.6-09.3 and 54-52.6-13 of the North Dakota Century Code, relating to the purchase of service credit for qualified military service, highway patrol retirement options, compliance with Internal Revenue Code provisions, confidentiality of records, purchase of sick leave, eligibility for the law enforcement retirement plan, temporary employee participation in the defined contribution retirement plan, and retirement benefit options under the public employees retirement system; and to repeal section 54-52-19.2 of the North Dakota Century Code, relating to prior service credit under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

3. A participating member ~~may elect to purchase~~, or a member not presently under covered employment, may request credit for qualified military service ~~credit~~ pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] ~~at any time prior to retirement by submitting a valid application and paying the member portion pursuant to rules adopted by the board. It is the responsibility of the applicant to supply any documentation required by the board~~. member shall submit a qualified

application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the employer must elect whether it will pay the employees' contributions or require the employees to pay those contributions. For qualified military service after August 1, 2005, in the absence of an election, the pickup methodology used by the employer pursuant to subsection 2 of section 39-03.1-09 at the time the employee began eligible military service controls. If the employer has elected to pay the employee contribution, the employer also has the option to purchase qualified military service credit for employees who were on leave for active service prior to August 1, 2005. The employee contribution to be paid equals ten and thirty-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period times the number of months of credit being purchased. If the employee contribution is paid, the governmental unit or, in the case of a member not under covered employment, the last employing governmental unit, shall pay sixteen and seventy-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period times the number of months of credit being purchased. In addition, the governmental unit or, in the case of a member not under covered employment, the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 the percentage required by section 54-52.1-03.2 times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

SECTION 2. AMENDMENT. Subsection 9 of section 39-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
   a. ~~A~~ An actuarially equivalent joint and survivor one hundred percent option.
   b. ~~Life~~ An actuarially equivalent life with ~~five-year or~~ ten-year or twenty-year certain options.
   c. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

   Unless a contributor requests that the contributor receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension, with a fifty percent option to the surviving spouse.

SECTION 3. AMENDMENT. Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-11.2. Internal Revenue Code compliance. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, 2005, as it applies for governmental plans.

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

39-03.1-28. Confidentiality of records. All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The information and records may be disclosed, under rules adopted by the board only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the member specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. The board may share other types of

information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.

5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.

6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.

7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.

8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 39-03.1-14.2. The information disclosed under this subsection must be limited to information necessary for drafting the order.

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

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

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

SECTION 5. AMENDMENT. Section 39-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-30. Conversion of sick leave. At termination of eligible employment a member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the employer, if the member or the member's employer pays an amount equal to the

member's final average salary, times the number of months of sick leave converted, times the employer and employee contribution, plus ~~one percent~~ the required contribution for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of that person's certified sick leave. All conversion payments must be made within sixty days of termination and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.

SECTION 6. AMENDMENT. Subsection 11 of section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

SECTION 7. AMENDMENT. Subsections 9 and 10 of section 54-52-17 of the North Dakota Century Code are amended and reenacted as follows:

9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
   a. Single life.
   b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.
   c. An actuarially equivalent level social security option, which is available only to members who retire prior to attaining the age at which they may begin to receive unreduced social security benefits.
   d. ~~Life~~ Actuarially equivalent life with ~~five-year or~~ ten-year or twenty-year certain options.
   e. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

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

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

SECTION 8. AMENDMENT. Subsection 5 of section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the ~~member must pay~~ employer must elect whether it will pay the employees' contributions under this subsection or require its employees to pay those contributions. For qualified military service after August 1, 2005, in the absence of an election, the pickup methodology used by the employer pursuant to subsection 3 of section 54-52-05 at the time the employee began eligible military service controls. If the employer has elected to pay the employee contribution, the employer also has the option to purchase qualified military service credit for employees who were on leave for active service prior to August 1, 2005. The employee contribution to be paid equals four percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of

service or, if shorter, the period of employment immediately preceding that period~~,~~ times the number of months of credit being purchased. If the ~~member makes the above payment~~ employee contribution is paid, the governmental unit~~,~~ or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period~~,~~ times the number of months of credit being purchased. In addition, the governmental unit~~,~~ or, in the case of a member not under covered employment, the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 the percentage required by section 54-52.1-03.2 times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period~~,~~ times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

SECTION 9. AMENDMENT. Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

54-52-28. Internal Revenue Code compliance. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, 2005, as it applies for governmental plans.

SECTION 10. AMENDMENT. Subsection 3 of section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Eligible employee" means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee

status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan.

SECTION 11. A new subsection to section 54-52.6-02 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 12. AMENDMENT. Section 54-52.6-09.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09.3. Contributions for military service. A participating member, or a member not presently under covered employment, may request credit and contributions for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the ~~member must pay~~ employer must elect whether it will pay the employees' contributions under this section or require its employees to pay those contributions. For qualified military service after August 1, 2005, in the absence of an election, the pickup methodology used by the employer pursuant to subsection 3 of section 54-52-05 at the time the employee began eligible military service controls. If the employer has elected to pay the employee contribution, the employer also has

the option to purchase qualified military service credit for employees who were on leave for active service prior to August 1, 2005. The employee contribution to be paid equals four percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding such period~~,~~ times the number of months for which the member is making contributions. If the ~~member makes the above payment~~ employee contribution is paid, the governmental unit~~,~~ or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding such period~~,~~ times the number of months for which the member made contributions. In addition, the governmental unit~~,~~ or, in the case of a member not under covered employment, the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 ~~one percent~~ the percentage required by section 54-52.1-03.2 times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period~~,~~ times the member's months for which the member made contributions. For credit before July 1, 1966, no contribution is required.

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

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that person's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum

distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

3. A former participating member ~~or refund beneficiary~~ may elect one or a combination of several of the following methods of distribution of the accumulated balance:

   a. A lump sum distribution to the recipient.

   b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

   c. Periodic distributions, as authorized by the board.

   d. No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

   A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in subdivisions a, b, or c. A beneficiary who is not the surviving spouse may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than five thousand dollars, the board shall automatically refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 14. REPEAL. Section 54-52-19.2 of the North Dakota Century Code is repealed.