Prepared by the Legislative Council staff for
Representative Haas
February 9, 2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1069

Page 1, line 1, after "new" insert "section to chapter 39-03.1, a new section to chapter 54-52, a new" and after "52-52.6-02" insert ", and a new section to chapter 54-52.6"

Page 1, line 2, after "to" insert "military service retirement credit and"

Page 1, line 4, remove "subsection 3 of"

Page 1, line 5, after the fourth comma insert "subsection 3 of section 54-52-05, section 54-52-06,"

Page 1, line 6, replace "subsection 5 of section" with "sections" and replace ", section" with "and"

Page 1, line 7, replace "sections 54-52.6-09.3 and" with "section"

Page 1, line 12, remove "and", replace "section" with "sections", and after "54-52-19.2" insert "and 54-52.6-09.3"

Page 1, line 14, after "system" insert "and retirement contributions for military service; and to provide an appropriation"

Page 1, replace lines 16 through 24 with:

"**SECTION 1. AMENDMENT.** Section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10.1. Refund and repurchase of contributions. Except as provided in ~~subsection 3~~ section 2 of this Act, a contributor whose employment has been terminated for at least thirty days is entitled to a refund of or to repurchase contributions as follows:

1. a. If the contributor has less than ten years of service at termination of employment, the refund is payable either on application of the contributor or, if within thirty days after termination the contributor has not provided a written statement to the board waiving the refund and requesting the contributor's account remain in the fund, automatically.

   b. If the contributor has at least ten years of service at the date of termination, the contributor may apply for a refund of accumulated deductions instead of retirement benefits. By receiving the refund of accumulated deductions under this subdivision, the contributor forfeits all months of service to the date of refund and cannot use those months for any future benefit calculations.

2. A contributor who was paid a refund under subdivision a of subsection 1 may, upon reemployment, elect to repurchase the forfeited past service for the retirement program and the retiree health benefits program in accordance with the rules adopted by the board.

~~3. A member may elect to purchase 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.~~

SECTION 2. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit. A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service 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 must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service."

Page 2, remove lines 1 through 31

Page 5, after line 17, insert:

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

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, and 54-52-06.3 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection ~~6~~ 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the

same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

SECTION 9. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan. Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. For those members who elect to exercise their rights under ~~subsection 5 of section 54-52-17.4~~ section 12 of this Act, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to ~~subsection 5 of section 54-52-17.4~~ section 12 of this Act a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to ~~subsection 5 of section 54-52-17.4~~ section 12 of this Act a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness."

Page 6, replace lines 13 through 31 with:

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

54-52-17.4. Purchase of additional credit.

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:

   a. Active prior employment in the armed forces of the United States, except as provided in ~~subsection 5~~ section 12 of this Act, for up to four years of credit.

   b. Employment as a permanent employee by a public employer either within or outside the state of North Dakota.

c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.

d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.

e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.

f. Employment as a permanent employee by the federal government.

2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:

a. Employer-approved leave of absence; or

b. Months away from work while participating as a seasonal employee.

3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:

a. Except as provided in ~~subsection 5~~ section 12 of this Act, for up to four years of credit for active employment in the armed forces of the United States.

b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.

c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges' retirement system.

4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.

~~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 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, 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.~~

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

~~7.~~ 6. In addition to service credit identified in this section, a vested member may purchase up to five years of service credit unrelated to any other eligible service.

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

Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit. A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service 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 must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service."

Page 7, remove lines 1 through 19

Page 8, replace lines 19 through 31 with:

"**SECTION 16.** A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit. A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service 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 must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service."

Page 9, remove lines 1 through 22

Page 10, line 25, replace "Section" with "Sections", after "54-52-19.2" insert "and 54-52.6-09.3", and replace "is" with "are"

Page 10, after line 26, insert:

"**SECTION 19. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from other funds derived from federal funds and other income, to the following departments for the purpose of defraying the cost of paying military service retirement credit for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

AGENCY	GENERAL FUND	OTHER FUNDS
Office of management and budget	$0	$3,343
Judicial branch	3,144	0
Retirement and investment office	0	1,803
State department of health	5,920	10,738
Department of human services	7,614	0
Job service North Dakota	0	3,780
Highway patrol	3,824	0
Department of corrections and rehabilitation	29,778	3,053
Adjutant general	7,027	18,249
Game and fish department	0	1,932

Parks and recreation department	2,201	207
State water commission	0	2,512
Department of transportation	0	50,854
Total	$59,508	$96,471"

Renumber accordingly