

**SENATE BILL NO. 2048**

Introduced by

Government and Veterans Affairs Committee

(At the request of the Public Employees Retirement System Board)

1 A BILL for an Act to create and enact a new subsection to section 39-03.1-28 and a new  
2 subsection to section 54-52-26 of the North Dakota Century Code, relating to confidentiality of  
3 retirement records; and to amend and reenact subsections 7 and 8 of section 39-03.1-08.2,  
4 subsections 2 and 5 of section 39-03.1-11, sections 39-03.1-11.2, 39-03.1-30, and 54-52-02.9,  
5 subsections 2 and 5 of section 54-52-17, subsections 1, 4, 5, and 6 of section 54-52-17.4,  
6 sections 54-52-27, 54-52-28, 54-52-29, 54-52.6-09.2, and 54-52.6-10, and subsection 4 of  
7 section 54-52.6-13 of the North Dakota Century Code, relating to terms, final average salary  
8 calculations, payment of delayed retirement benefits, conversion of sick leave, temporary  
9 employee purchase of service credit, compliance with the Internal Revenue Code, employer  
10 service credit purchase, automatic refund of account balances, and vesting under the highway  
11 patrolmen's retirement and public employees retirement systems.

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

13 **SECTION 1. AMENDMENT.** Subsections 7 and 8 of section 39-03.1-08.2 of the North  
14 Dakota Century Code are amended and reenacted as follows:

- 15 7. In addition to service credit identified in this section, a ~~member~~ contributor may  
16 purchase up to five years of service credit.
- 17 8. Pursuant to rules adopted by the board, the board may allow a ~~member~~ contributor  
18 to purchase service credit with either pretax or aftertax moneys, at the board's  
19 discretion. If a ~~member~~ contributor elects to purchase service credit using pretax  
20 moneys, the requirements and restrictions in subsection 2 of section 39-03.1-09  
21 apply to the purchase arrangement.

22 **SECTION 2. AMENDMENT.** Subsections 2 and 5 of section 39-03.1-11 of the North  
23 Dakota Century Code are amended and reenacted as follows:

- 1           2. Retirement benefits are based on the contributor's final average salary. Final  
2 average salary is the average of the highest salary received by the contributor for  
3 any thirty-six months employed during the last one hundred twenty months of  
4 employment. For contributors who ~~retire~~ terminate employment on or after ~~July 1,~~  
5 ~~2009~~ August 1, 2010, final average salary is the average of the highest salary  
6 received by the contributor for any thirty-six months employed during the last one  
7 hundred eighty months of employment. For contributors who terminate  
8 employment between July 31, 2005, and August 1, 2010, final average salary is  
9 the average of the highest salary received by the member for any thirty-six months  
10 employed during the period for which the board has appropriate and accurate  
11 salary records on its electronic data base, but that period may not be more than the  
12 last one hundred eighty months of employment. Months not employed or months  
13 in which employment was not as a permanent employee are excluded in arriving at  
14 the thirty-six months to be used for the purpose of computing an average. If the  
15 contributor has worked for less than thirty-six months at the postponed retirement  
16 date, the final average salary is the average salary for all months of employment.
- 17           5. On termination of employment after completing ten years of eligible employment  
18 but before the normal retirement date, a contributor who does not elect to receive  
19 early retirement benefits is eligible to receive deferred vested retirement benefits.  
20 The deferred benefits are payable beginning on the contributor's normal retirement  
21 date ~~and are one hundred percent of the contributor's normal retirement benefits in~~  
22 one of the forms provided in this section. Contributors who have delayed or  
23 inadvertently failed to apply for retirement benefits to commence on their normal  
24 retirement date may choose to receive either a lump sum payment equal to the  
25 amount of missed payments, or an actuarial increase to the form of benefit the  
26 member has selected, which increase must reflect the missed payments. The final  
27 average salary used for calculating deferred vested retirement benefits must be  
28 increased annually, from the later of the date of termination of employment or  
29 July 1, 1991, until the date the contributor begins to receive retirement benefits  
30 from the fund, at a rate as determined by the board not to exceed a rate that would

1 be approximately equal to annual salary increases provided state employees  
2 pursuant to action by the legislative assembly.

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

5 **39-03.1-11.2. Internal Revenue Code compliance.** The board shall administer the  
6 plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section  
7 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2005~~ 2007, as it applies for  
8 governmental plans.

9 **SECTION 4.** A new subsection to section 39-03.1-28 of the North Dakota Century Code  
10 is created and enacted as follows:

11 A person if the information relates to an employer service purchase under section  
12 39-03.1-10.2, but the information must be limited to the member's name and  
13 employer, the retirement program in which the member participates, the amount of  
14 service credit purchased by the employer, and the total amount expended by the  
15 employer for that service credit purchase, and that information may only be  
16 obtained from the member's employer.

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

19 **39-03.1-30. Conversion of sick leave.** ~~At termination of eligible employment a~~ A  
20 member is entitled to credit in the retirement system for each month of unused sick leave, as  
21 certified by the employer, if the member or the member's employer pays an amount equal to the  
22 member's final average salary, times the number of months of sick leave converted, times the  
23 employer and employee contribution, plus the required contribution for the retiree health  
24 benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full  
25 month for purposes of conversion to service credit. A member may convert all of the member's  
26 certified sick leave or a part of that person's certified sick leave. ~~All conversion payments must~~  
27 ~~be made within sixty days of termination and before the member receives a retirement annuity~~  
28 ~~unless the member has submitted an approved payment plan to the board.~~

29 **SECTION 6. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **54-52-02.9. Participation by temporary employees.** A temporary employee may  
2 elect, within one hundred eighty days of beginning employment, to participate in the public  
3 employees retirement system and receive credit for service after enrollment. The temporary  
4 employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths  
5 percent times the temporary employee's present monthly salary. The temporary employee  
6 shall also pay monthly to the retiree health benefit fund established under section 54-52.1-03.2  
7 one percent times the temporary employee's present monthly salary. This contribution must be  
8 recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay  
9 the temporary employee's contributions. A temporary employee may continue to participate as  
10 a temporary employee in the public employees retirement system until termination of  
11 employment or reclassification of the temporary employee as a permanent employee. A  
12 temporary employee may not purchase any additional credit, including additional credit under  
13 section 54-52-17.4 or past service under section 54-52-02.6.

14           **SECTION 7. AMENDMENT.** Subsections 2 and 5 of section 54-52-17 of the North  
15 Dakota Century Code are amended and reenacted as follows:

16           2. Retirement benefits are calculated from the participating member's final average  
17 salary, which is the average of the highest salary received by the member for any  
18 thirty-six months employed during the last one hundred twenty months of  
19 employment. For members who ~~retire~~ terminate employment on or after ~~July 1,~~  
20 ~~2009~~ August 1, 2010, final average salary is the average of the highest salary  
21 received by the member for any thirty-six months employed during the last one  
22 hundred eighty months of employment. For members who terminate employment  
23 between July 31, 2005, and August 1, 2010, final average salary is the average of  
24 the highest salary received by the member for any thirty-six months employed  
25 during the period for which the board has appropriate and accurate salary records  
26 on its electronic data base, but that period may not be more than the last one  
27 hundred eighty months of employment. Months not employed are excluded in  
28 arriving at the thirty-six months to be used for the purpose of computing an  
29 average. If the participating member has worked for less than thirty-six months at  
30 the normal retirement date, the final average salary is the average salary for the  
31 total months of employment.

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

13           **SECTION 8. AMENDMENT.** Subsections 1, 4, 5, and 6 of section 54-52-17.4 of the  
14 North Dakota Century Code are amended and reenacted as follows:

- 15           1. A participating member may elect to purchase credit for years of service and prior  
16           service for which the participating member is not presently receiving credit. A  
17           participating member is entitled to purchase additional credit under this section for  
18           the following service or prior service, except this service is not eligible for credit if  
19           the years claimed also qualify for retirement benefits from another retirement  
20           system:
- 21           a. Active prior employment in the armed forces of the United States, except as  
22           provided in section 54-52-17.14, for up to four years of credit.
  - 23           b. Employment as a permanent employee by a public employer either within or  
24           outside the state of North Dakota.
  - 25           c. Employment as a permanent employee by a political subdivision participating  
26           in the public employees retirement system which did not pay the cost of past  
27           service benefits under section 54-52-02.1.
  - 28           d. Service the participating member did not elect to repurchase upon  
29           reemployment under section 54-52-02.6.
  - 30           e. Service of an eligible employee, who exercised the privilege to withdraw from  
31           the predecessor plan to the public employees retirement system under

1 subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of  
2 the 1977 Session Laws.

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

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

23 5. Pursuant to rules adopted by the board, the board may allow a participating  
24 member to purchase service credit with either pretax or aftertax moneys, at the  
25 board's discretion. If the participating member elects to purchase service credit  
26 using pretax moneys, the requirements and restrictions in subsection 3 of section  
27 54-52-05 apply to the purchase arrangement.

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

1           **SECTION 9.** A new subsection to section 54-52-26 of the North Dakota Century Code  
2 is created and enacted as follows:

3           A person if the information relates to an employer service purchase, but the  
4           information must be limited to the member's name and employer, the retirement  
5           program in which the member participates, the amount of service credit purchased  
6           by the employer, and the total amount expended by the employer for that service  
7           credit purchase, and that information may only be obtained from the member's  
8           employer.

9           **SECTION 10. AMENDMENT.** Section 54-52-27 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11           **54-52-27. Purchase of sick leave credit.** ~~At termination of eligible employment a~~ A  
12 member is entitled to credit in the retirement system for each month of unused sick leave, as  
13 certified by the member's employer, if the member or the member's employer pays an amount  
14 equal to the member's final average salary, times the number of months of sick leave  
15 converted, times the percent of employer and employee contributions to the retirement program  
16 of the member, plus one percent for the retiree health benefits program. Hours of sick leave  
17 equal to a fraction of a month are deemed to be a full month for purposes of conversion to  
18 service credit. A member may convert all of the member's certified sick leave or a part of the  
19 member's certified sick leave. ~~All conversion payments must be made within sixty days of~~  
20 ~~termination of employment and before the member receives a retirement annuity unless the~~  
21 ~~member has submitted an approved payment plan to the board.~~

22           **SECTION 11. AMENDMENT.** Section 54-52-28 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **54-52-28. Internal Revenue Code compliance.** The board shall administer the plan in  
25 compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of  
26 the Internal Revenue Code in effect on August 1, ~~2005~~ 2007, as it applies for governmental  
27 plans.

28           **SECTION 12. AMENDMENT.** Section 54-52-29 of the North Dakota Century Code is  
29 amended and reenacted as follows:

30           **54-52-29. Employer service purchases.** A participating employer may purchase  
31 additional service credit on behalf of a member under the following conditions:

- 1           1.    The member may not be given the option to choose between an employer service
- 2                    purchase and an equivalent amount paid in cash.
- 3           2.    The member must meet one of the following conditions at the time the purchase is
- 4                    made:
- 5                    a.    The member's age plus service credit must be equal to or greater than
- 6                            seventy-five; or
- 7                    b.    The member's age must be at least fifty-five and the member must have at
- 8                            least three years of service credit.
- 9           3.    The board must determine the purchase price on an actuarially equivalent basis,  
10                   taking into account the contributions necessary for both the retirement program  
11                   and the retiree health benefits fund.
- 12           4.    The purchase must be completed before the member's retirement.
- 13           5.    The employer may purchase a maximum of five years of service credit on behalf of
- 14                    the member.
- 15           6.    The employer must pay the purchase price for the service credit purchased under
- 16                    this section in a lump sum.

17           **SECTION 13. AMENDMENT.** Section 54-52.6-09.2 of the North Dakota Century Code  
18 is amended and reenacted as follows:

19           **54-52.6-09.2. Additional employer contributions.** Additional lump sum contributions  
20 by an employer to a participating member's defined contribution retirement plan account may  
21 be made if the participating member has ~~twenty-five years of service,~~ has not retired, and has  
22 not received a retirement benefit under this chapter. Contributions may be made in an amount  
23 actuarially equivalent to the amounts determined pursuant to chapter 54-52 as follows:

- 24           1.    For the conversion of sick leave pursuant to section 54-52-27 if the participating  
25                   member has four or more years of service.
- 26           2.    The equivalent of up to five years of service credit unrelated to any other eligible  
27                    service as provided in subsection 5 of section 54-52-29 if the participating member  
28                    has twenty-five or more years of service.

29           **SECTION 14. AMENDMENT.** Section 54-52.6-10 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **54-52.6-10. Vesting.** A participating member is immediately one hundred percent  
2 vested in that member's contributions made to that member's account under this chapter. A  
3 participating member vests in the employer contributions made on that member's behalf to an  
4 account under this chapter according to the following schedule:

- 5           1. Upon completion of two years of service, fifty percent.
- 6           2. Upon completion of three years of service, seventy-five percent.
- 7           3. Upon completion of four years of service, one hundred percent.

8 A participating member also becomes one hundred percent vested in the employer  
9 contributions upon reaching age sixty-five. A participating member who was a member or  
10 deferred member of the public employees retirement system under chapter 54-52 who makes  
11 an election to participate in the defined contribution retirement plan pursuant to this chapter;  
12 must be credited with the years of service accrued under the public employees retirement  
13 system on the effective date of participation in the defined contribution retirement plan for the  
14 purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a  
15 result of the failure of a participating member to vest in the employer contribution must be  
16 deposited in the administrative expenses account.

17           **SECTION 15. AMENDMENT.** Subsection 4 of section 54-52.6-13 of the North Dakota  
18 Century Code is amended and reenacted as follows:

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