

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2166

Introduced by

Senators Holmberg, Hacker, Heitkamp, Lindaas

Representatives Dietrich, Owens

1 A BILL for an Act to amend and reenact subsection 22 of section 54-52-01, subsections 2 and
2 3 of section 54-52-05, section 54-52-06, subsection 8 of section 54-52.6-01, and subsection 3
3 of section 54-52.6-09 of the North Dakota Century Code, relating to the definition of wages and
4 salaries and employer contributions for employees of the North Dakota mill and elevator
5 association under the public employees retirement system; to provide an appropriation; and to
6 provide an effective date.

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

8 **SECTION 1. AMENDMENT.** Subsection 22 of section 54-52-01 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 22. "Wages" and "salaries" means the member's earnings in eligible employment
11 under this chapter reported as salary on the member's federal income tax
12 withholding statements, including payments for overtime earned by employees of
13 the North Dakota mill and elevator association, plus any salary reduction or salary
14 deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary"
15 does not include fringe benefits such as payments for unused sick leave, personal
16 leave, vacation leave paid in a lump sum, overtime other than payments for
17 overtime earned by employees of the North Dakota mill and elevator association,
18 housing allowances, transportation expenses, early retirement incentive pay,
19 severance pay, medical insurance, workforce safety and insurance benefits,
20 disability insurance premiums or benefits, or salary received by a member in lieu of
21 previously employer-provided fringe benefits under an agreement between the
22 member and participating employer. Overtime earned by employees of the North
23 Dakota mill and elevator association must be reported and annualized pursuant to

1 rules adopted by the board. Bonuses may be considered as salary under this
2 section if reported and annualized pursuant to rules adopted by the board.

3 **SECTION 2. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 3. ~~Each~~ Except for payments for overtime earned by employees of the North Dakota
6 mill and elevator association, each employer, at its option, may pay all or a portion
7 of the employee contributions required by subsection 2 and sections 54-52-06.1,
8 54-52-06.2, and 54-52-06.3 or the employee contributions required to purchase
9 service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4.
10 Employees may not receive the contributed amounts directly once the employer
11 has elected to pay the employee contributions. The amount paid must be paid by
12 the employer in lieu of contributions by the employee. If the state determines not
13 to pay the contributions, the amount that would have been paid must continue to
14 be deducted from the employee's compensation. If contributions are paid by the
15 employer, they must be treated as employer contributions in determining tax
16 treatment under this code and the federal Internal Revenue Code. If contributions
17 are paid by the employer, they may not be included as gross income of the
18 employee in determining tax treatment under this code and the Internal Revenue
19 Code until they are distributed or made available. The employer shall pay these
20 employee contributions from the same source of funds used in paying
21 compensation to the employee or from the levy authorized by subsection 5 of
22 section 57-15-28.1. The employer shall pay these contributions by effecting an
23 equal cash reduction in the gross salary of the employee or by an offset against
24 future salary increases or by a contribution of a reduction in gross salary and offset
25 against future salary increases. If employee contributions are paid by the
26 employer, they must be treated for the purposes of this chapter in the same
27 manner and to the same extent as employee contributions made prior to the date
28 on which employee contributions were assumed by the employer. An employer
29 exercising its option under this subsection shall report its choice to the board in
30 writing.

1 **SECTION 3. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-52-06. Employer's contribution to retirement plan.** ~~Each~~ Except for the North
4 Dakota mill and elevator association, which shall contribute an amount equal to seven and
5 eighteen-hundredths percent of the monthly salary or wage of a participating member, each
6 governmental unit shall contribute an amount equal to four and twelve-hundredths percent of
7 the monthly salary or wage of a participating member. For those members who elect to
8 exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case
9 of a member not presently under covered employment the most recent employing
10 governmental unit, shall pay the associated employer contribution. If the employee's
11 contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the
12 employer unit shall contribute, in addition, an amount equal to the required employee's
13 contribution. Each governmental unit shall pay the contribution monthly, or in the case of an
14 election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from its
15 funds appropriated for payroll and salary or any other funds available for these purposes. Any
16 governmental unit failing to pay the contributions monthly, or in the case of an election made
17 pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty dollars and, as
18 interest, one percent of the amount due for each month of delay or fraction thereof after the
19 payment became due. In lieu of assessing a civil penalty or one percent per month, or both,
20 interest at the actuarial rate of return may be assessed for each month the contributions are
21 delinquent. If contributions are paid within ninety days of the date they became due, penalty
22 and interest to be paid on delinquent contributions may be waived. An employer is required to
23 submit contributions for any past eligible employee who was employed after July 1, 1977, for
24 which contributions were not made if the employee would have been eligible to become vested
25 had the employee participated and if the employee elects to join the public employees
26 retirement system. Employer contributions may not be assessed for eligible service that an
27 employee has waived pursuant to subsection 1 of section 54-52-05. The board shall report to
28 each session of the legislative assembly the contributions necessary, as determined by the
29 actuarial study, to maintain the fund's actuarial soundness.

30 **SECTION 4. AMENDMENT.** Subsection 8 of section 54-52.6-01 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 8. "Wages" and "salaries" means earnings in eligible employment under this chapter
2 reported as salary on a federal income tax withholding statement, including
3 payments for overtime earned by employees of the North Dakota mill and elevator
4 association, plus any salary reduction or salary deferral amounts under 26 U.S.C.
5 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such
6 as payments for unused sick leave, personal leave, vacation leave paid in a lump
7 sum, overtime other than payments for overtime earned by employees of the North
8 Dakota mill and elevator association, housing allowances, transportation
9 expenses, early retirement, incentive pay, severance pay, medical insurance,
10 workforce safety and insurance benefits, disability insurance premiums or benefits,
11 or salary received by a member in lieu of previously employer-provided fringe
12 benefits under an agreement between an employee and a participating employer.
13 Bonuses may be considered as salary under this section if reported and
14 annualized pursuant to rules adopted by the board.

15 **SECTION 5. AMENDMENT.** Subsections 2 and 3 of section 54-52.6-09 of the North
16 Dakota Century Code are amended and reenacted as follows:

17 2. ~~The~~ Except for the North Dakota mill and elevator association, which shall
18 contribute an amount equal to seven and eighteen-hundredths of the monthly
19 salary or wage of a participating member, each employer shall contribute an
20 amount equal to four and twelve-hundredths percent of the monthly salary or wage
21 of a participating member. If the employee's contribution is paid by the employer
22 under subsection 3, the employer shall contribute, in addition, an amount equal to
23 the required employee's contribution. The employer shall pay monthly such
24 contribution into the participating member's account from its funds appropriated for
25 payroll and salary or any other funds available for such purposes. If the employer
26 fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars
27 and, as interest, one percent of the amount due for each month of delay or fraction
28 thereof after the payment became due.

29 3. ~~Each~~ Except for payments for overtime earned by employees of the North Dakota
30 mill and elevator association, each employer, at its option, may pay the employee
31 contributions required by this section for all compensation earned after

1 December 31, 1999. The amount paid must be paid by the employer in lieu of
2 contributions by the employee. If the employer decides not to pay the
3 contributions, the amount that would have been paid will continue to be deducted
4 from the employee's compensation. If contributions are paid by the employer, they
5 must be treated as employer contributions in determining tax treatment under this
6 code and the federal Internal Revenue Code. Contributions paid by the employer
7 may not be included as gross income of the employee in determining tax treatment
8 under this code and the federal Internal Revenue Code until they are distributed or
9 made available. The employer shall pay these employee contributions from the
10 same source of funds used in paying compensation to the employee. The
11 employer shall pay these contributions by effecting an equal cash reduction in the
12 gross salary of the employee or by an offset against future salary increases or by a
13 combination of a reduction in gross salary and offset against future salary
14 increases. Employee contributions paid by the employer must be treated for the
15 purposes of this chapter in the same manner and to the same extent as employee
16 contributions made before the date on which employee contributions were
17 assumed by the employer. An employer shall exercise its option under this
18 subsection by December 1, 1999, and shall report its choice to the board in writing.
19 The option chosen may not be revoked for the remainder of the biennium.
20 Thereafter, the option choice must be forwarded to the board, in writing, by June
21 fifteenth of each odd-numbered year.

22 **SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the public
23 employees retirement fund, not otherwise appropriated, the sum of \$38,000, or so much of the
24 sum as may be necessary, to the public employees retirement system board for the purpose of
25 defraying the expenses of administering this Act, for the biennium beginning July 1, 2007, and
26 ending June 30, 2009. There is appropriated out of any moneys in the mill and elevator fund,
27 not otherwise appropriated, the sum of \$205,000, or so much of the sum as may be necessary,
28 to the North Dakota mill and elevator association for the purpose of paying the retirement
29 contributions required by this Act, for the biennium beginning July 1, 2007, and ending June 30,
30 2009.

31 **SECTION 7. EFFECTIVE DATE.** This Act becomes effective on January 1, 2008.