

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2109

Introduced by

Government and Veterans Affairs Committee

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

1 A BILL for an Act to amend and reenact section 15-10-17, subsection 6 of section 39-03.1-11,
2 sections 39-03.1-11.2 and 39-03.1-14.1, subsection 3 of section 54-52-02.1, section 54-52-03,
3 subsections 3 and 6 of section 54-52-17, sections 54-52-27 and 54-52-28, subsection 3 of
4 section 54-52.1-03, and subsection 3 of section 54-52.6-09 of the North Dakota Century Code,
5 relating to special annuity purchases in the alternate retirement program for university system
6 employees, surviving spouse payment options under the highway patrolmen's retirement plan,
7 calculation of member service credit under the highway patrolmen's retirement plan, election of
8 members to the public employees retirement system board, calculation of normal retirement
9 date for peace officers and correctional officers under the public employees retirement system,
10 payment of member account balances under the public employees retirement system, purchase
11 of sick leave credit under the public employees retirement system, spousal elections to
12 participate in the uniform group insurance program, reporting of employer pickups under the
13 defined contribution retirement plan, and Internal Revenue Code compliance under the highway
14 patrolmen's retirement plan and the public employees retirement system.

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

16 **SECTION 1. AMENDMENT.** Section 15-10-17 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **15-10-17. Specific powers and duties of the state board of higher education.**

19 The state board of higher education has all the powers and shall perform all the duties
20 necessary to the control and management of the institutions described in this chapter. In
21 addition to the powers and duties specified in section 6 of article VIII of the Constitution of North
22 Dakota, the board may:

- 23 1. a. Appoint and remove the president or other faculty head, and the professors,
- 24 instructors, teachers, officers, and other employees of the several institutions

- 1 under its control, and to fix their salaries within the limits of legislative
2 appropriations therefor, and to fix the terms of office and to prescribe the duties
3 thereof, provided that the consideration of the appointment or removal of any
4 such personnel shall be in executive session if the board chooses unless the
5 individual involved requests that the meeting be open to other individuals or to
6 the public.
- 7 b. Appoint and remove the commissioner of higher education, fix the
8 commissioner's salary within the limits of legislative appropriations, and prescribe
9 the commissioner's duties.
- 10 c. Appoint and remove all university system office personnel, fix their salaries within
11 the limits of legislative appropriations, fix their terms of office, and prescribe their
12 duties.
- 13 2. Authorize the employment of law enforcement officers having concurrent jurisdiction
14 with other law enforcement officers to enforce laws and regulations at its institutions.
- 15 3. Set tuition and fees.
- 16 4. a. Establish a retirement program as an alternative to chapter 15-39.1 for university
17 system employees subject to the following guidelines:
- 18 (1) Benefits under the program must be provided through annuity contracts
19 purchased by the board but which become the property of the participants;
- 20 (2) The cost of the annuity contracts must be defrayed by contributions made
21 pursuant to rules of the state board of higher education;
- 22 (3) Eligible employees appointed before July 1, 1973, shall participate in the
23 alternate retirement program only by their individual election. When the
24 electing eligible employee is a member of the teachers' fund for retirement,
25 the employee's assessments and employer's contributions together with
26 interest credited at the current rate for one-year certificates then being paid
27 by the Bank of North Dakota must be transferred to the employee's account
28 in the alternate program. The election must be made before July 1, 1980,
29 and shall relinquish all rights the eligible employee or the employee's
30 beneficiary may have to benefits provided in chapters 15-39 and 15-39.2;
31 and

1 (4) Employees of the university system who are members of the public
2 employees retirement system under chapter 54-52 or 54-52.6 and who
3 become entitled to participate in the alternate retirement program are
4 entitled to a special annuity purchase in the alternate retirement program in
5 accordance with this subdivision. An eligible employee who consents to
6 have that employee's contribution included is entitled to have that
7 employee's contribution and employer's contribution, with interest, in the
8 public employees retirement system fund, used by the retirement board of
9 the public employees retirement system to purchase for that employee an
10 annuity in the alternate retirement program in lieu of any other rights under
11 the public employees retirement fund. However, before the employer's
12 contribution may be used for an annuity purchase, the employee's
13 combined years of service with the public employees retirement system and
14 the alternate retirement program must equal or exceed the years of service
15 necessary to be eligible for retirement benefits under the public employees
16 retirement system. An employee who transferred from the public employees
17 retirement system before March 30, 1987, and who received a refund of that
18 employee's contribution is entitled to have the employer's contribution, with
19 interest, used to purchase an annuity even if that employee did not
20 purchase an annuity in the alternate employee program with the employee's
21 contribution. If an employee makes the election allowed under this
22 subdivision, that employee relinquishes all rights the employee or any of the
23 employee's beneficiaries may have had to benefits provided under
24 chapter chapters 54-52 and 54-52.6.

25 b. Provide for the administration of the alternate retirement program and establish
26 rules for the program consistent with this subsection. This subsection does not
27 derogate any existing retirement programs approved by the board.

28 5. Determine policy for purchasing by the university system in coordination with the office
29 of management and budget as provided by law.

30 6. Establish by rule an early retirement program for faculty and officers of the board as
31 defined by the board. The limitations on severance pay pursuant to section 54-14-04.3

1 and on requiring the employee to pay contributions to continue on the state uniform
2 group insurance program upon retirement or upon termination of employment
3 pursuant to section 54-52.1-03 do not apply to the early retirement program.

4 7. Adopt rules to protect the confidentiality of student records, medical records, and,
5 consistent with section 44-04-18.4, trade secret, proprietary, commercial, and financial
6 information.

7 8. Authorize and encourage university system entities to enter into partnerships, limited
8 liability companies, joint ventures, or other contractual arrangements with private
9 business and industry for the purpose of business or industrial development or
10 fostering basic and applied research or technology transfer.

11 9. Adopt rules promoting research, encouraging development of intellectual property and
12 other inventions and discoveries by university system employees, and protecting and
13 marketing the inventions and discoveries. The rules must govern ownership or transfer
14 of ownership rights and distribution of income that may be derived from an invention or
15 discovery resulting from research or employment in the university system. The rules
16 may provide for transfer of ownership rights or distribution of income to a private,
17 nonprofit entity created for the support of the university system or one of its
18 institutions.

19 **SECTION 2. AMENDMENT.** Subsection 6 of section 39-03.1-11 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 6. If before retiring a contributor dies after completing ten years of eligible employment,
22 the board shall pay the contributor's accumulated deductions to the contributor's
23 designated beneficiary as provided in this subsection. If the contributor has designated
24 an alternate beneficiary with the surviving spouse's written consent, the board shall
25 pay the contributor's account balance to the named beneficiary. If the contributor has
26 named more than one primary beneficiary, the board shall pay the contributor's
27 account balance to the named primary beneficiaries in the percentages designated by
28 the contributor or, if the contributor has not designated a percentage for the
29 beneficiaries, in equal percentages. If one or more of the primary beneficiaries has
30 predeceased the contributor, the board shall pay the predeceased beneficiary's share
31 to the remaining primary beneficiaries. If there are no remaining primary beneficiaries,

1 the board shall pay the contributor's account balance to the contingent beneficiaries in
2 the same manner. If there are no remaining designated beneficiaries, the board shall
3 pay the contributor's account balance to the contributor's estate. If the contributor has
4 not designated an alternate beneficiary under this section or the surviving spouse is
5 the beneficiary, the surviving spouse of the contributor may select one of the following
6 optional forms of payment:

7 a. A lump sum payment of the contributor's accumulated deductions as of the date
8 of death.

9 b. ~~Payments for sixty months as calculated for the deceased contributor as if the~~
10 ~~contributor were age fifty-five at the date of death.~~

11 e. Payment of a monthly retirement benefit equal to fifty percent of the deceased
12 contributor's accrued normal retirement benefits until the spouse dies.

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

15 **39-03.1-11.2. Internal Revenue Code compliance.**

16 ~~4.~~The board shall administer the plan in compliance with ~~section 415, section 401(a)(9),~~
17 ~~section 401(a)(17), and section 401(a)(31)~~the following sections of the Internal Revenue Code
18 in effect on August 1, ~~2009~~2011, as it applies for governmental plans.

19 ~~2-1.~~ Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A)
20 of the Internal Revenue Code.

21 a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal
22 Revenue Code, as approved by the legislative assembly, must be adjusted under
23 section 415(d) of the Internal Revenue Code, effective January first of each year
24 following a regular legislative session. The adjustment of the defined benefit
25 dollar limitation under section 415(d) applies to participating members who have
26 had a separation from employment, but that member's benefit payments may not
27 reflect the adjusted limit prior to January first of the calendar year in which the
28 adjustment applies.

29 ~~3.~~ b. If a participating member's benefit is increased by plan amendment after the
30 commencement of benefit payments, the member's annual benefit may not
31 exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the

1 Internal Revenue Code, as adjusted under section 415(d) for the calendar year in
2 which the increased benefit is payable.

3 4. c. If a participating member is, or ever has been, a participant in another defined
4 benefit plan maintained by the employer, the sum of the participant's annual
5 benefits from all the plans may not exceed the defined benefit dollar limitation
6 under section 415(b)(1)(A) of the Internal Revenue Code. If the participating
7 member's employer-provided benefits under all such defined benefit plans would
8 exceed the defined benefit dollar limitation, the benefit must be reduced to
9 comply with section 415 of the Internal Revenue Code. This reduction must be
10 made pro rata between the plans, in proportion to the participating member's
11 service in each plan.

12 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code,
13 including the incidental death benefit requirements under section 401(a)(9)(G), and the
14 regulations issued under that provision to the extent applicable to governmental plans.
15 Accordingly, benefits must be distributed or begin to be distributed no later than a
16 member's required beginning date, and the required minimum distribution rules
17 override any inconsistent provision of this chapter. A member's required beginning
18 date is April first of the calendar year following the later of the calendar year in which
19 the member attains age seventy and one-half or terminates employment.

20 3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue
21 Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).

22 4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly,
23 a distributee may elect to have an eligible rollover distribution, as defined in
24 section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible
25 retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code,
26 specified by the distributee.

27 5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued,
28 the rights of all affected participating members to accrued retirement benefits under
29 this chapter as of the date of termination or discontinuance is nonforfeitable, to the
30 extent then funded.

1 **SECTION 4. AMENDMENT.** Section 39-03.1-14.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of benefits.**

4 1. For the purpose of determining eligibility for benefits under this chapter, a member's
5 years of service is the total of the years of service earned under this chapter and the
6 years of service employment or years of service credit earned in any number of the
7 following, the total of which may not exceed twelve months of credit per year:

8 a. The public employees retirement system.

9 b. The teachers' fund for retirement.

10 c. The teachers' insurance and annuity association of America - college retirement
11 equities fund (TIAA-CREF), for service credit earned while employed by North
12 Dakota institutions of higher education.

13 2. If a member terminates eligible employment under this chapter, if that member has not
14 received a refund of the member's accumulated deductions, and if that member
15 begins eligible employment in a plan described in subdivision a or b of subsection 1,
16 that member may elect to remain an inactive member of the system without refund of
17 the member's accumulated deductions. The election must be made within ninety days
18 after beginning the eligible employment. The board shall terminate the inactive status
19 of a member under this subsection if the member gains eligible employment under this
20 chapter or if the member terminates eligible employment under a plan described in
21 subdivision a or b of subsection 1.

22 3. Pursuant to rules adopted by the board, a member who has service credit in the
23 system and in any of the alternate plans described in subdivision a or b of
24 subsection 1 is entitled to benefits under this chapter. The employee may elect to have
25 benefits calculated using the benefit formula in section 39-03.1-11 under either of the
26 following calculation methods:

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

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

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

7 **SECTION 5. AMENDMENT.** Subsection 3 of section 54-52-02.1 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 3. Notwithstanding any other provision of this chapter, a political subdivision of this state
10 not currently participating in the public employees retirement system may not become
11 a participant in the retirement system until an actuarial study is performed under the
12 direction of the board to calculate the required employer contribution. ~~The for any past~~
13 service liability and the required employer contribution must be an amount determined
14 sufficient to ~~fund the normal cost and~~ amortize and fund any past service liability over
15 a period not to exceed thirty years as determined by the board. Any fees incurred in
16 performing the actuarial study must be paid for by the political subdivision in a manner
17 determined by the board.

18 **SECTION 6. AMENDMENT.** Section 54-52-03 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **54-52-03. Governing authority.**

21 A state agency is hereby created to constitute the governing authority of the system to
22 consist of a board of seven persons known as the retirement board. No more than one elected
23 member of the board may be in the employ of a single department, institution, or agency of the
24 state or in the employ of a political subdivision. No employee of the public employees retirement
25 system or the state retirement and investment office may serve on the board.

26 1. One member of the board must be appointed by the governor to serve a term of five
27 years. The appointee must be a North Dakota citizen who is not a state or political
28 subdivision employee and who by experience is familiar with money management.
29 The citizen member is chairman of the board.

30 2. One member of the board must be appointed by the attorney general from the
31 attorney general's legal staff and shall serve a term of five years.

- 1 3. The state health officer appointed under section 23-01-05 is a member of the board.
- 2 4. Three board members must be elected by and from among the active participating
- 3 members, members of the retirement plan established under chapter 54-52.6,
- 4 members of the retirement plan established under chapter 39-03.1, and members of
- 5 the job service North Dakota retirement plan. Employees who have terminated their
- 6 employment for whatever reason are not eligible to serve as elected members of the
- 7 board under this subsection. Board members must be elected to a five-year term
- 8 pursuant to an election called by the board. Notice of board elections must be given to
- 9 all active participating members. The time spent in performing duties as a board
- 10 member may not be charged against any employee's accumulated annual or any
- 11 other type of leave.
- 12 5. One board member must be elected by and from among those persons who are
- 13 receiving retirement benefits ~~or who are eligible to receive deferred vested retirement~~
- 14 benefits under this chapter. The board shall call the election and must give prior notice
- 15 of the election to the persons eligible to participate in the election pursuant to this
- 16 subsection. The board member shall serve a term of five years.
- 17 6. The members of the board are entitled to receive sixty-two dollars and fifty cents per
- 18 day compensation and necessary mileage and travel expenses as provided in
- 19 sections 44-08-04 and 54-06-09. This is in addition to any other pay or allowance due
- 20 the chairman or a member, plus an allowance for expenses they may incur through
- 21 service on the board.
- 22 7. A board member shall serve a five-year term and until the board member's successor
- 23 qualifies. Each board member is entitled to one vote, and four of the seven board
- 24 members constitute a quorum. Four votes are necessary for resolution or action by the
- 25 board at any meeting.

26 **SECTION 7. AMENDMENT.** Subsections 3 and 6 of section 54-52-17 of the North Dakota
27 Century Code are amended and reenacted as follows:

- 28 3. Retirement dates are defined as follows:
 - 29 a. Normal retirement date, except for a national guard security officer or firefighter
 - 30 or a peace officer or correctional officer employed by the bureau of criminal
 - 31 investigation or by a political subdivision, is:

- 1 (1) The first day of the month next following the month in which the member
2 attains the age of sixty-five years; or
- 3 (2) When the member has a combined total of years of service credit and years
4 of age equal to eighty-five and has not received a retirement benefit under
5 this chapter.
- 6 b. Normal retirement date for a national guard security officer or firefighter is the first
7 day of the month next following the month in which the national guard security
8 officer or firefighter attains the age of fifty-five years and has completed at least
9 three consecutive years of employment as a national guard security officer or
10 firefighter immediately preceding retirement.
- 11 c. Normal retirement date for a peace officer or correctional officer employed by a
12 political subdivision is:
- 13 (1) The first day of the month next following the month in which the peace
14 officer or correctional officer attains the age of fifty-five years and has
15 completed at least three consecutive years of employment as a peace
16 officer or correctional officer ~~immediately preceding retirement~~; or
- 17 (2) When the peace officer or correctional officer has a combined total of years
18 of service credit and years of age equal to eighty-five and has not received
19 a retirement benefit under this chapter.
- 20 d. Normal retirement date for a peace officer employed by the bureau of criminal
21 investigation is:
- 22 (1) The first day of the month next following the month in which the peace
23 officer attains the age of fifty-five years and has completed at least three
24 consecutive years of employment as a peace officer immediately preceding
25 retirement; or
- 26 (2) When the peace officer has a combined total of years of service credit and
27 years of age equal to eighty-five and has not received a retirement benefit
28 under this chapter.
- 29 e. Postponed retirement date is the first day of the month next following the month
30 in which the member, on or after July 1, 1977, actually severs or has severed the
31 member's employment after reaching the normal retirement date.

1 f. Early retirement date, except for a national guard security officer or firefighter or a
2 peace officer or correctional officer employed by the bureau of criminal
3 investigation or by a political subdivision, is the first day of the month next
4 following the month in which the member attains the age of fifty-five years and
5 has completed three years of eligible employment. For a national guard security
6 officer or firefighter, early retirement date is the first day of the month next
7 following the month in which the national guard security officer or firefighter
8 attains the age of fifty years and has completed at least three years of eligible
9 employment. For a peace officer or correctional officer employed by the bureau of
10 criminal investigation or by a political subdivision, early retirement date is the first
11 day of the month next following the month in which the peace officer or
12 correctional officer attains the age of fifty years and has completed at least three
13 years of eligible employment.

14 g. Disability retirement date is the first day of the month after a member becomes
15 permanently and totally disabled, according to medical evidence called for under
16 the rules of the board, and has completed at least one hundred eighty days of
17 eligible employment. For supreme and district court judges, permanent and total
18 disability is based solely on a judge's inability to perform judicial duties arising out
19 of physical or mental impairment, as determined pursuant to rules adopted by the
20 board or as provided by subdivision a of subsection 3 of section 27-23-03. A
21 member is eligible to receive disability retirement benefits only if the member:
22 (1) Became disabled during the period of eligible employment; and
23 (2) Applies for disability retirement benefits within twelve months of the date the
24 member terminates employment.

25 A member is eligible to continue to receive disability benefits as long as the
26 permanent and total disability continues and the member submits the necessary
27 documentation and undergoes medical testing required by the board, or for as
28 long as the member participates in a rehabilitation program required by the
29 board, or both. If the board determines that a member no longer meets the
30 eligibility definition, the board may discontinue the disability retirement benefit.
31 The board may pay the cost of any medical testing or rehabilitation services it

1 deems necessary and these payments are appropriated from the retirement fund
2 for those purposes.

3 6. If before retiring a member dies after completing three years of eligible employment,
4 except for supreme and district court judges, who must have completed five years of
5 eligible employment, the board shall pay the member's account balance to the
6 member's designated beneficiary as provided in this subsection. If the member has
7 designated an alternate beneficiary with the surviving spouse's written consent, the
8 board shall pay the member's account balance to the named beneficiary. If the
9 member has named more than one primary beneficiary, the board shall pay the
10 member's account balance to the named primary beneficiaries in the percentages
11 designated by the member or, if the member has not designated a percentage for the
12 beneficiaries, in equal percentages. If one or more of the primary beneficiaries has
13 predeceased the member, the board shall pay the predeceased beneficiary's share to
14 the remaining primary beneficiaries. If any beneficiary survives the member, yet dies
15 before distribution of the beneficiary's share, the beneficiary must be treated as if the
16 beneficiary predeceased the member. If there are no remaining primary beneficiaries,
17 the board shall pay the member's account balance to the contingent beneficiaries in
18 the same manner. If there are no remaining designated beneficiaries, the board shall
19 pay the member's account balance to the member's estate. If the member has not
20 designated an alternate beneficiary or the surviving spouse is the beneficiary, the
21 surviving spouse of the member may select a form of payment as follows:

22 a. If the member was a supreme or district court judge, the surviving spouse may
23 select one of the following optional forms of payment:

24 (1) A lump sum payment of the member's retirement account as of the date of
25 death.

26 (2) Payments as calculated for the deceased member as if the member was of
27 normal retirement age at the date of death, payable until the spouse dies.

28 b. The surviving spouse of all other members may select one of the following
29 options:

30 (1) A lump sum payment of the member's retirement account as of the date of
31 death.

- 1 (2) Payment of a monthly retirement benefit equal to fifty percent of the
2 deceased member's accrued single life retirement benefits until the spouse
3 dies.
- 4 (3) If the member dies on or after the member's normal retirement date, the
5 payment of a monthly retirement benefit equal to an amount that would have
6 been paid to the surviving spouse if the member had retired on the day of
7 the member's death and had selected a one hundred percent joint and
8 survivor annuity, payable until the spouse dies. A surviving spouse who
9 received a benefit under this subsection as of July 31, 1995, is entitled to
10 the higher of that person's existing benefit or the equivalent of the accrued
11 benefit available under the one hundred percent joint and survivor provision
12 as if the deceased member were of normal retirement age, with the increase
13 payable beginning August 1, 1995.

14 **SECTION 8. AMENDMENT.** Section 54-52-27 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **54-52-27. Purchase of sick leave credit.**

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

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

1 **54-52-28. Internal Revenue Code compliance.**

2 ~~1.~~The board shall administer the plan in compliance with ~~section 415, section 401(a)(9),~~
3 ~~section 401(a)(17), and section 401(a)(31)~~the following sections of the Internal Revenue Code
4 in effect on August 1, ~~2009~~2011, as it applies for governmental plans.

5 ~~2.1.~~ Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A)
6 of the Internal Revenue Code.

7 a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal
8 Revenue Code, as approved by the legislative assembly, must be adjusted under
9 section 415(d) of the Internal Revenue Code, effective January first of each year
10 following a regular legislative session. The adjustment of the defined benefit
11 dollar limitation under section 415(d) applies to participating members who have
12 had a separation from employment, but that member's benefit payments may not
13 reflect the adjusted limit prior to January first of the calendar year in which the
14 adjustment applies.

15 ~~3.~~ b. If a participating member's benefit is increased by plan amendment after the
16 commencement of benefit payments, the member's annual benefit may not
17 exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the
18 Internal Revenue Code, as adjusted under section 415(d) for the calendar year in
19 which the increased benefit is payable.

20 ~~4.~~ c. If a participating member is, or ever has been, a participant in another defined
21 benefit plan maintained by the employer, the sum of the participant's annual
22 benefits from all the plans may not exceed the defined benefit dollar limitation
23 under section 415(b)(1)(A) of the Internal Revenue Code. If the participating
24 member's employer-provided benefits under all such defined benefit plans would
25 exceed the defined benefit dollar limitation, the benefit must be reduced to
26 comply with section 415 of the Internal Revenue Code. The reduction must be
27 made pro rata between the plans, in proportion to the participating member's
28 service in each plan.

29 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code,
30 including the incidental death benefit requirements under section 401(a)(9)(G), and the
31 regulations issued under that provision to the extent applicable to governmental plans.

- 1 Accordingly, benefits must be distributed or begin to be distributed no later than a
2 member's required beginning date, and the required minimum distribution rules
3 override any inconsistent provision of this chapter. A member's required beginning
4 date is April first of the calendar year following the later of the calendar year in which
5 the member attains age seventy and one-half or terminates employment.
- 6 3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue
7 Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).
- 8 4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly,
9 a distributee may elect to have an eligible rollover distribution, as defined in
10 section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible
11 retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code,
12 specified by the distributee.
- 13 5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued,
14 the rights of all affected participating members to accrued retirement benefits under
15 this chapter as of the date of termination or discontinuance is nonforfeitable, to the
16 extent then funded.

17 **SECTION 10. AMENDMENT.** Subsection 3 of section 54-52.1-03 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 3. A retiree who has accepted a periodic distribution from the defined contribution
20 retirement plan pursuant to section 54-52.6-13 who the board determines is eligible for
21 participation in the uniform group insurance program or has accepted a retirement
22 allowance from the public employees retirement system, the highway patrolmen's
23 retirement system, the teachers' insurance and annuity association of America -
24 college retirement equities fund for service credit earned while employed by North
25 Dakota institutions of higher education, the retirement system established by job
26 service North Dakota under section 52-11-01, the judges' retirement system
27 established under chapter 27-17, or the teachers' fund for retirement may elect to
28 participate in the uniform group under this chapter without meeting minimum
29 requirements at age sixty-five, when the member's spouse reaches age sixty-five,
30 upon the receipt of a benefit, or when the spouse terminates employment. If a retiree
31 or surviving spouse does not elect to participate at the times specified in this

1 subsection, the retiree or surviving spouse must meet the minimum requirements
2 established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each
3 retiree or surviving spouse shall pay directly to the board the premiums in effect for the
4 coverage then being provided. A retiree or surviving spouse who has met the initial
5 eligibility requirements of this subsection to begin participation in the uniform group
6 insurance program remains eligible as long as the retiree maintains the retiree's
7 participation in the program by paying the required premium pursuant to rules adopted
8 by the board.

9 **SECTION 11. AMENDMENT.** Subsection 3 of section 54-52.6-09 of the North Dakota
10 Century Code is amended and reenacted as follows:

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