

Sixty-second  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2108

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 sections 39-03.1-09, 39-03.1-10, 54-52-02.9, 54-52-05,  
2 54-52-06, 54-52-06.1, 54-52-06.3, and 54-52-06.4, subsection 6 of 54-52.6-02, and section  
3 54-52.6-09 of the North Dakota Century Code, relating to increased employer and employee  
4 contributions under the highway patrolmen's retirement plan and public employees retirement  
5 system.

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

7 **SECTION 1. AMENDMENT.** Section 39-03.1-09 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **39-03.1-09. Payments by contributors - Employer payment of employee contribution.**

- 10 1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund  
11 ten and thirty-hundredths percent of the member's monthly salary, which sum must be  
12 deducted from the member's salary and credited to the member's account in the fund.  
13 Member contributions increase by one percent of the member's monthly salary  
14 beginning with the monthly reporting period of January 2012, and with an additional  
15 increase of one percent, beginning with the reporting period of January 2013.
- 16 2. The state of North Dakota, at its option, may pay the member contributions required by  
17 subsection 1 for all compensation earned after June 30, 1983, and may pay the  
18 member contributions required to purchase service credit on a pretax basis pursuant  
19 to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in  
20 lieu of contributions by the member. A member may not receive the contributed  
21 amounts directly once the employer has elected to pay the member contributions. If  
22 the state decides not to pay the contributions, the amount that would have been paid  
23 will continue to be deducted from compensation. If contributions are paid by the state,  
24 they must be treated as employer contributions in determining tax treatment under this

1 code and the federal Internal Revenue Code. If contributions are paid by the state,  
2 they must not be included as gross income of the member in determining tax  
3 treatment under this code and the Internal Revenue Code until they are distributed or  
4 made available. The state shall pay these member contributions from the same source  
5 of funds used in paying compensation to the members. The state shall pay these  
6 contributions by effecting an equal cash reduction in the gross salary of the employee  
7 or by an offset against future salary increases or by a combination of a reduction in  
8 gross salary and offset against future salary increases. If member contributions are  
9 paid by the state, they must be treated for the purposes of this chapter in the same  
10 manner and to the same extent as member contributions made prior to the date the  
11 contributions were assumed by the state. The option given employers by this  
12 subsection must be exercised in accordance with rules adopted by the board.

- 13 3. For compensation earned after August 1, 2009, all employee contributions required  
14 under subsection 1, and not otherwise paid under subsection 2, must be paid by the  
15 state in lieu of contributions by the member. All contributions paid by the state under  
16 this subsection must be treated as employer contributions in determining tax treatment  
17 under this code and the federal Internal Revenue Code. Contributions paid by the  
18 state under this subsection may not be included as gross income of the member in  
19 determining tax treatment under this code and the Internal Revenue Code until the  
20 contributions are distributed or made available. Contributions paid by the state in  
21 accordance with this subsection must be treated for the purposes of this chapter in the  
22 same manner and to the same extent as member contributions made before the date  
23 the contributions were assumed by the state. The state shall pay these member  
24 contributions from the same source of funds used in paying compensation to the  
25 members. The state shall pay these contributions by effecting an equal cash reduction  
26 in the gross salary of the employee. The state shall continue making payments under  
27 this section unless otherwise specifically provided for under the agency's biennial  
28 appropriation or by law.

29 **SECTION 2. AMENDMENT.** Section 39-03.1-10 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1       **39-03.1-10. Contributions by the state.**

2       The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths  
3 percent of the monthly salary or wage of a participating member. State contributions increase by  
4 one percent of the monthly salary or wage of a participating member beginning with the monthly  
5 reporting period of January 2012, and with an additional increase of one percent, beginning with  
6 the reporting period of January 2013. If the member's contribution is paid by the state under  
7 subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to  
8 the required member's contribution. The state shall pay the associated employer contribution for  
9 those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1.

10       **SECTION 3. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12       **54-52-02.9. Participation by temporary employees.**

13       A temporary employee may elect, within one hundred eighty days of beginning employment,  
14 to participate in the public employees retirement system and receive credit for service after  
15 enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight  
16 and twelve-hundredths percent times the temporary employee's present monthly salary. The  
17 amount required to be paid by a temporary employee increases by two percent times the  
18 temporary employee's present monthly salary beginning with the monthly reporting period of  
19 January 2012, and with an additional two percent increase, beginning with the reporting period  
20 of January 2013. The temporary employee shall also pay the required monthly contribution to  
21 the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be  
22 recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay  
23 the temporary employee's contributions. A temporary employee may continue to participate as a  
24 temporary employee in the public employees retirement system until termination of employment  
25 or reclassification of the temporary employee as a permanent employee. A temporary employee  
26 may not purchase any additional credit, including additional credit under section 54-52-17.4 or  
27 past service under section 54-52-02.6.

28       **SECTION 4. AMENDMENT.** Section 54-52-05 of the North Dakota Century Code is  
29 amended and reenacted as follows:

1           **54-52-05. Membership and assessments - Employer payment of employee**  
2 **contributions.**

- 3           1. Every eligible governmental unit employee concurring in the plan must so state in  
4 writing and all future eligible employees are participating members. An employee who  
5 was not enrolled in the retirement system when eligible to participate must be enrolled  
6 immediately upon notice of the employee's eligibility, unless the employee waives in  
7 writing the employee's right to participate for the previous time of eligibility, to avoid  
8 contributing to the fund for past service. An employee who is eligible for normal  
9 retirement who accepts a retirement benefit under this chapter and who subsequently  
10 becomes employed with a participating employer other than the employer with which  
11 the employee was employed at the time the employee retired under this chapter may,  
12 before reenrolling in the retirement plan, elect to permanently waive future  
13 participation in the retirement plan and the retiree health program and maintain that  
14 employee's retirement status. An employee making this election is not required to  
15 make any future employee contributions to the public employees retirement system  
16 nor is the employee's employer required to make any further contributions on behalf of  
17 that employee.
- 18           2. Each member must be assessed and required to pay monthly four percent of the  
19 monthly salary or wage paid to the member, and such assessment must be deducted  
20 and retained out of such salary in equal monthly installments commencing with the  
21 first month of employment. Member contributions increase by one percent of the  
22 monthly salary or wage paid to the member beginning with the monthly reporting  
23 period of January 2012, and with an additional increase of one percent, beginning with  
24 the reporting period of January 2013.
- 25           3. Each employer, at its option, may pay all or a portion of the employee contributions  
26 required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and  
27 54-52-06.4 or the employee contributions required to purchase service credit on a  
28 pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not  
29 receive the contributed amounts directly once the employer has elected to pay the  
30 employee contributions. The amount paid must be paid by the employer in lieu of  
31 contributions by the employee. If the state determines not to pay the contributions, the

1 amount that would have been paid must continue to be deducted from the employee's  
2 compensation. If contributions are paid by the employer, they must be treated as  
3 employer contributions in determining tax treatment under this code and the federal  
4 Internal Revenue Code. If contributions are paid by the employer, they may not be  
5 included as gross income of the employee in determining tax treatment under this  
6 code and the Internal Revenue Code until they are distributed or made available. The  
7 employer shall pay these employee contributions from the same source of funds used  
8 in paying compensation to the employee or from the levy authorized by subsection 5  
9 of section 57-15-28.1. The employer shall pay these contributions by effecting an  
10 equal cash reduction in the gross salary of the employee or by an offset against future  
11 salary increases or by a contribution of a reduction in gross salary and offset against  
12 future salary increases. If employee contributions are paid by the employer, they must  
13 be treated for the purposes of this chapter in the same manner and to the same extent  
14 as employee contributions made prior to the date on which employee contributions  
15 were assumed by the employer. An employer exercising its option under this  
16 subsection shall report its choice to the board in writing.

- 17 4. For compensation earned after August 1, 2009, all employee contributions required  
18 under section 54-52-06.1 and the job service North Dakota retirement plan, and not  
19 otherwise paid under subsection 3, must be paid by the employer in lieu of  
20 contributions by the member. All contributions paid by the employer under this  
21 subsection must be treated as employer contributions in determining tax treatment  
22 under this code and the Internal Revenue Code. Contributions paid by the employer  
23 under this subsection may not be included as gross income of the member in  
24 determining tax treatment under this code and the Internal Revenue Code until the  
25 contributions are distributed or made available. Contributions paid by the employer in  
26 accordance with this subsection must be treated for the purposes of this chapter in the  
27 same manner and to the same extent as member contributions made before the date  
28 the contributions were assumed by the employer. The employer shall pay these  
29 member contributions from the same source of funds used in paying compensation to  
30 the employee. The employer shall pay these contributions by effecting an equal cash  
31 reduction in the gross salary of the employee. The employer shall continue making

1           payments under this section unless otherwise specifically provided for under the  
2           agency's biennial appropriation or by amendment to law.

3           **SECTION 5. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **54-52-06. Employer's contribution to retirement plan.**

6           Each governmental unit shall contribute an amount equal to four and twelve-hundredths  
7 percent of the monthly salary or wage of a participating member. Governmental unit  
8 contributions increase by one percent of the monthly salary or wage of a participating member  
9 beginning with the monthly reporting period of January 2012, and with an additional increase of  
10 one percent, beginning with the reporting period of January 2013. For those members who elect  
11 to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the  
12 case of a member not presently under covered employment the most recent employing  
13 governmental unit, shall pay the associated employer contribution. If the employee's  
14 contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the  
15 employer unit shall contribute, in addition, an amount equal to the required employee's  
16 contribution. Each governmental unit shall pay the contribution monthly, or in the case of an  
17 election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from its  
18 funds appropriated for payroll and salary or any other funds available for these purposes. Any  
19 governmental unit failing to pay the contributions monthly, or in the case of an election made  
20 pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty dollars and, as  
21 interest, one percent of the amount due for each month of delay or fraction thereof after the  
22 payment became due. In lieu of assessing a civil penalty or one percent per month, or both,  
23 interest at the actuarial rate of return may be assessed for each month the contributions are  
24 delinquent. If contributions are paid within ninety days of the date they became due, penalty and  
25 interest to be paid on delinquent contributions may be waived. An employer is required to  
26 submit contributions for any past eligible employee who was employed after July 1, 1977, for  
27 which contributions were not made if the employee would have been eligible to become vested  
28 had the employee participated and if the employee elects to join the public employees  
29 retirement system. Employer contributions may not be assessed for eligible service that an  
30 employee has waived pursuant to subsection 1 of section 54-52-05. The board shall report to

1 each session of the legislative assembly the contributions necessary, as determined by the  
2 actuarial study, to maintain the fund's actuarial soundness.

3 **SECTION 6. AMENDMENT.** Section 54-52-06.1 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **54-52-06.1. Contribution by supreme and district court judges - Employer**  
6 **contribution.**

7 Each judge of the supreme or district court who is a member of the public employees  
8 retirement system must be assessed and required to pay monthly five percent of the judge's  
9 monthly salary. Member contributions increase by one percent of the judge's monthly salary  
10 beginning with the monthly reporting period of January 2012, and with an additional increase of  
11 one percent, beginning with the reporting period of January 2013. The assessment must be  
12 deducted and retained out of the judge's salary in equal monthly installments. The state shall  
13 contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly  
14 salary of a supreme or district court judge who is a participating member of the system, which  
15 matching contribution must be paid from its funds appropriated for salary, or from any other  
16 funds available for such purposes. State contributions increase by one percent of the monthly  
17 salary of a supreme or district court judge who is a participating member of the system  
18 beginning with the monthly reporting period of January 2012, and with an additional increase of  
19 one percent, beginning with the reporting period of January 2013. If the judge's contribution is  
20 paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition,  
21 an amount equal to the required judge's contribution.

22 **SECTION 7. AMENDMENT.** Section 54-52-06.3 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **54-52-06.3. Contribution by peace officers and correctional officers employed by**  
25 **political subdivisions - Employer contribution.**

26 Each peace officer or correctional officer employed by a political subdivision that enters into  
27 an agreement with the retirement board on behalf of its peace officers and correctional officers  
28 separately from its other employees and who is a member of the public employees retirement  
29 system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace  
30 officer or correctional officer contributions increase by one-half of one percent of the member's  
31 monthly salary beginning with the monthly reporting period of January 2012, and with an

1 additional increase of one-half of one percent, beginning with the reporting period of  
2 January 2013. The assessment must be deducted and retained out of the employee's salary in  
3 equal monthly installments. The peace officer's or correctional officer's employer shall contribute  
4 an amount determined by the board to be actuarially required to support the level of benefits  
5 specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid  
6 by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in  
7 addition, an amount equal to the required peace officer's or correctional officer's assessment.

8 **SECTION 8. AMENDMENT.** Section 54-52-06.4 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **54-52-06.4. Contribution by peace officers employed by the bureau of criminal**  
11 **investigation - Employer contribution.**

12 Each peace officer employed by the bureau of criminal investigation who is a member of the  
13 public employees retirement system is assessed and shall pay monthly four percent of the  
14 employee's monthly salary. Peace officer contributions increase by one percent of the member's  
15 monthly salary beginning with the monthly reporting period of January 2012, and with an  
16 additional increase of one percent, beginning with the reporting period of January 2013. The  
17 assessment must be deducted and retained out of the employee's salary in equal monthly  
18 installments. The peace officer's employer shall contribute an amount determined by the board  
19 to be actuarially required to support the level of benefits specified in section 54-52-17. The  
20 employer's contribution must be paid from funds appropriated for salary or from any other funds  
21 available for such purposes. If the peace officer's assessment is paid by the employer under  
22 subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to  
23 the required peace officer's assessment.

24 **SECTION 9. AMENDMENT.** Subsection 6 of section 54-52.6-02 of the North Dakota  
25 Century Code is amended and reenacted as follows:

26 6. A participating member who becomes a temporary employee may still participate in  
27 the defined contribution retirement plan upon filing an election with the board within  
28 one hundred eighty days of transferring to temporary employee status. The  
29 participating member may not become a member of the defined benefit plan as a  
30 temporary employee. The temporary employee electing to participate in the defined  
31 contribution retirement plan shall pay monthly to the fund an amount equal to eight

1 and twelve-hundredths percent times the temporary employee's present monthly  
2 salary. The amount required to be paid by a temporary employee increases by two  
3 percent times the temporary employee's present monthly salary beginning with the  
4 monthly reporting period of January 2012, and with an additional increase of two  
5 percent, beginning with the reporting period of January 2013. The temporary  
6 employee shall also pay the required monthly contribution to the retiree health benefit  
7 fund established under section 54-52.1-03.2. This contribution must be recorded as a  
8 member contribution pursuant to section 54-52.1-03.2. An employer may not pay the  
9 temporary employee's contributions. A temporary employee may continue to  
10 participate as a temporary employee until termination of employment or  
11 reclassification of the temporary employee as a permanent employee.

12 **SECTION 10. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **54-52.6-09. Contributions - Penalty.**

- 15 1. Each participating member shall contribute monthly four percent of the monthly salary  
16 or wage paid to the participant, and this assessment must be deducted from the  
17 participant's salary in equal monthly installments commencing with the first month of  
18 participation in the defined contribution retirement plan established under this chapter.  
19 Participating member contributions increase by one percent of the monthly salary or  
20 wage paid to the participant beginning with the monthly reporting period of  
21 January 2012, and with an additional increase of one percent, beginning with the  
22 reporting period of January 2013.
- 23 2. The employer shall contribute an amount equal to four and twelve-hundredths percent  
24 of the monthly salary or wage of a participating member. Employer contributions  
25 increase by one percent of the monthly salary or wage of a participating member  
26 beginning with the monthly reporting period of January 2012, and with an additional  
27 increase of one percent, beginning with the reporting period of January 2013. If the  
28 employee's contribution is paid by the employer under subsection 3, the employer  
29 shall contribute, in addition, an amount equal to the required employee's contribution.  
30 The employer shall pay monthly such contribution into the participating member's  
31 account from its funds appropriated for payroll and salary or any other funds available

1           for such purposes. If the employer fails to pay the contributions monthly, it is subject to  
2           a civil penalty of fifty dollars and, as interest, one percent of the amount due for each  
3           month of delay or fraction thereof after the payment became due.

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