

Fifty-ninth
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Public Employees Retirement System)

1 A BILL for an Act to create and enact a new subsection to section 54-52.6-02 of the North
2 Dakota Century Code, relating to temporary employee participation in the defined contribution
3 retirement plan under the public employees retirement system; to amend and reenact
4 subsection 3 of section 39-03.1-10.1, subsections 3 and 9 of section 39-03.1-11, sections
5 39-03.1-11.2, 39-03.1-28, and 39-03.1-30, subsection 11 of section 54-52-01, subsection 3 of
6 section 54-52-04, subsections 9 and 10 of section 54-52-17, subsection 5 of section
7 54-52-17.4, section 54-52-28, subsection 3 of section 54-52.6-01, and sections 54-52.6-09.3
8 and 54-52.6-13 of the North Dakota Century Code, relating to the purchase of service credit for
9 qualified military service, highway patrol disability and retirement options, compliance with
10 Internal Revenue Code provisions, confidentiality of records, purchase of sick leave, eligibility
11 for the law enforcement retirement plan, employee criminal history record investigation,
12 temporary employee participation in the defined contribution retirement plan, and retirement
13 benefit options under the public employees retirement system; and to repeal section 54-52-19.2
14 of the North Dakota Century Code, relating to prior service credit under the public employees
15 retirement system.

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

17 **SECTION 1. AMENDMENT.** Subsection 3 of section 39-03.1-10.1 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 3. A participating member may elect to purchase, or a member not presently under
20 covered employment, may request credit for qualified military service credit
21 pursuant to the Uniformed Services Employment and Reemployment Rights Act of
22 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] at any time prior to
23 retirement by submitting a valid application and paying the member portion
24 pursuant to rules adopted by the board. It is the responsibility of the applicant to

1 ~~supply any documentation required by the board.~~ member shall submit a qualified
2 application with proof of eligible military service to the board in order to receive
3 credit for military service. For credit on and after July 1, 1966, the employer must
4 elect whether it will pay the employees' contributions or require the employees to
5 pay those contributions. For qualified military service after August 1, 2005, in the
6 absence of an election, the pickup methodology used by the employer pursuant to
7 subsection 2 of section 39-03.1-09 at the time the employee began eligible military
8 service controls. If the employer has elected to pay the employee contribution, the
9 employer also has the option to purchase qualified military service credit for
10 employees who were on leave for active service prior to August 1, 2005. The
11 employee contribution to be paid equals ten and thirty-hundredths percent times
12 the salary the member would have received but for the period of service or, if that
13 amount is not reasonably certain, the member's average rate of compensation
14 during the twelve-month period immediately preceding the member's period of
15 service or, if shorter, the period of employment immediately preceding that period
16 times the number of months of credit being purchased. If the employee
17 contribution is paid, the governmental unit or, in the case of a member not under
18 covered employment, the last employing governmental unit, shall pay sixteen and
19 seventy-hundredths percent times the salary the member would have received but
20 for the period of service or, if that amount is not reasonably certain, the member's
21 average rate of compensation during the twelve-month period immediately
22 preceding the member's period of service or, if shorter, the period of employment
23 immediately preceding that period times the number of months of credit being
24 purchased. In addition, the governmental unit or, in the case of a member not
25 under covered employment, the last employing governmental unit, shall pay to the
26 retiree health benefits fund established under section 54-52.1-03.2 the percentage
27 required by section 54-52.1-03.2 times the salary the member would have received
28 but for the period of service or, if that amount is not reasonably certain, the
29 member's average rate of compensation during the twelve-month period
30 immediately preceding the member's period of service or, if shorter, the period of

1 employment immediately preceding that period times the member's months of
2 credit being purchased. For credit before July 1, 1966, no contribution is required.

3 **SECTION 2. AMENDMENT.** Subsections 3 and 9 of section 39-03.1-11 of the North
4 Dakota Century Code are amended and reenacted as follows:

5 3. Retirement dates are as follows:

6 a. Early retirement date is the first day of the month next following the month in
7 which the contributor attains the age of fifty years and has completed at least
8 ten years of eligible employment.

9 b. Normal retirement date is:

10 (1) The first day of the month next following the month in which the
11 contributor attains the age of fifty-five years and has completed at least
12 ten years of eligible employment; or

13 (2) When the contributor has a combined total of years of service credit
14 and years of age equal to eighty and has not received a retirement
15 benefit under this chapter.

16 c. Postponed retirement date is the first day of the month next following the
17 month in which the contributor attains the age of sixty years.

18 d. Disability retirement date is the first day of the month after a contributor
19 becomes permanently and totally disabled, according to medical evidence
20 called for under the rules of the board, and has completed at least one
21 hundred eighty days of employment. Permanent and total disability is based
22 solely on a contributor's inability to perform the contributor's duties arising out
23 of physical or mental impairment.

24 9. The board shall adopt rules providing for the receipt of retirement benefits in the
25 following optional forms:

26 a. A An actuarially equivalent joint and survivor one hundred percent option.

27 b. ~~Life~~ An actuarially equivalent life with ~~five-year or ten-year or twenty-year~~
28 certain options.

29 c. An actuarially equivalent partial lump sum distribution option with a
30 twelve-month maximum lump sum distribution.

1 Unless a contributor requests that the contributor receive benefits according to one
2 of these options at the time of applying for retirement, all retirement benefits must
3 be in the form of a lifetime monthly pension, with a fifty percent option to the
4 surviving spouse.

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

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

11 **SECTION 4. AMENDMENT.** Section 39-03.1-28 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **39-03.1-28. Confidentiality of records.** All records relating to the retirement benefits
14 of a member or a beneficiary under this chapter are confidential and are not public records.

15 The information and records may be disclosed, under rules adopted by the board only to:

- 16 1. A person to whom the member has given written consent to have the information
17 disclosed.
- 18 2. A person legally representing the member, upon proper proof of representation,
19 and unless the member specifically withholds consent.
- 20 3. A person authorized by a court order.
- 21 4. A member's participating employer, limited to information concerning the member's
22 years of service credit and years of age. The board may share other types of
23 information as needed by the employer to validate the employer's compliance with
24 existing state or federal laws. Any information provided to the member's
25 participating employer under this subsection must remain confidential except as
26 provided under subsection 6.
- 27 5. The administrative staff of the retirement and investment office for purposes
28 relating to membership and benefits determination.
- 29 6. State or federal agencies for purposes of reporting on a service provider's
30 provision of services or when the employer must supply information to an agency
31 to validate the employer's compliance with existing state or federal laws.

- 1 7. Member interest groups approved by the board on a third-party blind list basis,
2 limited to information concerning the member's participation, name, and address.
- 3 8. The member's spouse or former spouse, that individual's legal representative, and
4 the judge presiding over the member's dissolution proceeding for purposes of
5 aiding the parties in drafting a qualified domestic relations order under section
6 39-03.1-14.2. The information disclosed under this subsection must be limited to
7 information necessary for drafting the order.
- 8 9. Beneficiaries designated by a participating member or a former participating
9 member to receive benefits after the member's death, but only after the member's
10 death. Information relating to beneficiaries may be disclosed to other beneficiaries
11 of the same member.
- 12 10. Any person if the board determines disclosure is necessary for treatment,
13 operational, or payment purposes, including the completion of necessary
14 documents.
- 15 11. The general public, but only after the board has been unable to locate the member
16 for a period in excess of two years, and limited to the member's name and the fact
17 that the board has been unable to locate the member.

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

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

30 **SECTION 6. AMENDMENT.** Subsection 11 of section 54-52-01 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 11. "Peace officer" means a participating member who is a peace officer as defined in
2 section 12-63-01 and is employed as a peace officer by a political subdivision and,
3 notwithstanding subsection 12, for persons employed after August 1, 2005, is
4 employed thirty-two hours or more per week and at least twenty weeks each year
5 of employment. Participating members of the law enforcement retirement plan
6 created by this chapter who begin employment after August 1, 2005, are ineligible
7 to participate concurrently in any other retirement plan administered by the public
8 employees retirement system.

9 **SECTION 7. AMENDMENT.** Subsection 3 of section 54-52-04 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 3. The board shall authorize the creation of whatever staff it deems necessary for
12 sound and economical administration of the system. The executive director shall
13 hire the staff, subject to the approval of the board. For an individual first employed
14 by the public employees retirement system after July 31, 2005, the executive
15 director shall secure a complete set of fingerprints of that employee if that
16 employee has unescorted physical access to the office or any security-sensitive
17 area of the office as designated by the executive director. The executive director
18 shall ensure that the fingerprints are submitted to the bureau of criminal
19 investigation for verification of the identity of the employee and to obtain criminal
20 history record information and to the federal bureau of investigation for a
21 nationwide background check. The bureau of criminal investigation shall provide
22 any criminal history record information that may lawfully be made available under
23 chapter 12-60 and the response of the federal bureau of investigation to the public
24 employees retirement system.

25 **SECTION 8. AMENDMENT.** Subsections 9 and 10 of section 54-52-17 of the North
26 Dakota Century Code are amended and reenacted as follows:

27 9. The board shall adopt rules providing for the receipt of retirement benefits in the
28 following optional forms:
29 a. Single life.
30 b. An actuarially equivalent joint and survivor option, with fifty percent or one
31 hundred percent options.

- 1 c. An actuarially equivalent level social security option, which is available only to
2 members who retire prior to attaining the age at which they may begin to
3 receive unreduced social security benefits.
- 4 d. Life Actuarially equivalent life with five-year or ten-year or twenty-year certain
5 options.
- 6 e. An actuarially equivalent partial lump sum distribution option with a
7 twelve-month maximum lump sum distribution.

8 Except for supreme and district court judges, unless a member specifically
9 requests that the member receive benefits according to one of these options at the
10 time of applying for retirement, all retirement benefits must be in the form of a
11 single life benefit. For supreme and district court judges, unless a member
12 specifically requests that the member receive benefits according to one of these
13 options at the time of applying for retirement, all retirement benefits must be in the
14 form of a lifetime monthly pension with fifty percent of the benefit continuing for the
15 life of the surviving spouse, if any.

- 16 10. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules
17 adopted by the board for the purchase of additional service credit, but only to the
18 extent the transfer is a rollover contribution that meets the requirement of
19 section 408 of the Internal Revenue Code.

20 **SECTION 9. AMENDMENT.** Subsection 5 of section 54-52-17.4 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 5. A participating member, or a member not presently under covered employment,
23 may request credit for qualified military service pursuant to the Uniformed Services
24 Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat.
25 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with
26 proof of eligible military service to the board in order to receive credit for military
27 service. For credit on and after July 1, 1966, the ~~member must pay~~ employer must
28 elect whether it will pay the employees' contributions under this subsection or
29 require its employees to pay those contributions. For qualified military service after
30 August 1, 2005, in the absence of an election, the pickup methodology used by the
31 employer pursuant to subsection 3 of section 54-52-05 at the time the employee

1 began eligible military service controls. If the employer has elected to pay the
2 employee contribution, the employer also has the option to purchase qualified
3 military service credit for employees who were on leave for active service prior to
4 August 1, 2005. The employee contribution to be paid equals four percent times
5 the salary the member would have received but for the period of service or, if that
6 amount is not reasonably certain, the member's average rate of compensation
7 during the twelve-month period immediately preceding the member's period of
8 service or, if shorter, the period of employment immediately preceding that period;
9 times the number of months of credit being purchased. If the ~~member makes the~~
10 ~~above payment~~ employee contribution is paid, the governmental unit, or, in the
11 case of a member not under covered employment, the last employing
12 governmental unit, shall pay four and twelve-hundredths percent times the salary
13 the member would have received but for the period of service or, if that amount is
14 not reasonably certain, the member's average rate of compensation during the
15 twelve-month period immediately preceding the member's period of service or, if
16 shorter, the period of employment immediately preceding that period; times the
17 number of months of credit being purchased. In addition, the governmental unit,
18 or, in the case of a member not under covered employment, the last employing
19 governmental unit, shall pay to the retiree health benefits fund established under
20 section 54-52.1-03.2 the percentage required by section 54-52.1-03.2 times the
21 salary the member would have received but for the period of service or, if that
22 amount is not reasonably certain, the member's average rate of compensation
23 during the twelve-month period immediately preceding the member's period of
24 service or, if shorter, the period of employment immediately preceding that period;
25 times the member's months of credit being purchased. For credit before July 1,
26 1966, no contribution is required.

27 **SECTION 10. AMENDMENT.** Section 54-52-28 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **54-52-28. Internal Revenue Code compliance.** The board shall administer the plan in
30 compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of
31 the Internal Revenue Code in effect on August 1, 2005, as it applies for governmental plans.

1 **SECTION 11. AMENDMENT.** Subsection 3 of section 54-52.6-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 3. "Eligible employee" means a permanent state employee, except an employee of
4 the judicial branch or an employee of the board of higher education and state
5 institutions under the jurisdiction of the board, who is eighteen years or more of
6 age and who is in a position not classified by North Dakota human resource
7 management services. If a participating member loses permanent employee
8 status and becomes a temporary employee, the member may still participate in the
9 defined contribution retirement plan.

10 **SECTION 12.** A new subsection to section 54-52.6-02 of the North Dakota Century
11 Code is created and enacted as follows:

12 A participating member who becomes a temporary employee may still participate
13 in the defined contribution retirement plan upon filing an election with the board
14 within one hundred eighty days of transferring to temporary employee status. The
15 participating member may not become a member of the defined benefit plan as a
16 temporary employee. The temporary employee electing to participate in the
17 defined contribution retirement plan shall pay monthly to the fund an amount equal
18 to eight and twelve-hundredths percent times the temporary employee's present
19 monthly salary. The temporary employee shall also pay the required monthly
20 contribution to the retiree health benefit fund established under section
21 54-52.1-03.2. This contribution must be recorded as a member contribution
22 pursuant to section 54-52.1-03.2. An employer may not pay the temporary
23 employee's contributions. A temporary employee may continue to participate as a
24 temporary employee until termination of employment or reclassification of the
25 temporary employee as a permanent employee.

26 **SECTION 13. AMENDMENT.** Section 54-52.6-09.3 of the North Dakota Century Code
27 is amended and reenacted as follows:

28 **54-52.6-09.3. Contributions for military service.** A participating member, or a
29 member not presently under covered employment, may request credit and contributions for
30 qualified military service pursuant to the Uniformed Services Employment and Reemployment
31 Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall

1 submit a qualified application with proof of eligible military service to the board in order to
2 receive credit for military service. For credit on and after July 1, 1966, the ~~member must pay~~
3 employer must elect whether it will pay the employees' contributions under this section or
4 require its employees to pay those contributions. For qualified military service after August 1,
5 2005, in the absence of an election, the pickup methodology used by the employer pursuant to
6 subsection 3 of section 54-52-05 at the time the employee began eligible military service
7 controls. If the employer has elected to pay the employee contribution, the employer also has
8 the option to purchase qualified military service credit for employees who were on leave for
9 active service prior to August 1, 2005. The employee contribution to be paid equals four
10 percent times the salary the member would have received but for the period of service or, if that
11 amount is not reasonably certain, the member's average rate of compensation during the
12 twelve-month period immediately preceding the member's period of service or, if shorter, the
13 period of employment immediately preceding such period; times the number of months for
14 which the member is making contributions. If the ~~member makes the above payment~~ employee
15 contribution is paid, the governmental unit; or, in the case of a member not under covered
16 employment, the last employing governmental unit, shall pay four and twelve-hundredths
17 percent times the salary the member would have received but for the period of service or, if that
18 amount is not reasonably certain, the member's average rate of compensation during the
19 twelve-month period immediately preceding the member's period of service or, if shorter, the
20 period of employment immediately preceding such period; times the number of months for
21 which the member made contributions. In addition, the governmental unit; or, in the case of a
22 member not under covered employment, the last employing governmental unit, shall pay to the
23 retiree health benefits fund established under section 54-52.1-03.2 ~~one percent~~ the percentage
24 required by section 54-52.1-03.2 times the salary the member would have received but for the
25 period of service or, if that amount is not reasonably certain, the member's average rate of
26 compensation during the twelve-month period immediately preceding the member's period of
27 service or, if shorter, the period of employment immediately preceding that period; times the
28 member's months for which the member made contributions. For credit before July 1, 1966, no
29 contribution is required.

30 **SECTION 14. AMENDMENT.** Section 54-52.6-13 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **54-52.6-13. Distributions.**

- 2 1. A participating member is eligible to receive distribution of that person's
3 accumulated balance in the plan upon becoming a former participating member.
- 4 2. Upon the death of a participating member or former participating member, the
5 accumulated balance of that deceased participant is considered to belong to the
6 refund beneficiary, if any, of that deceased participant. If a valid nomination of
7 refund beneficiary is not on file with the board, the board, in a lump sum
8 distribution, shall distribute the accumulated balance to a legal representative, if
9 any, of the deceased participant or, if there is no legal representative, to the
10 deceased participant's estate.
- 11 3. A former participating member ~~or refund beneficiary~~ may elect one or a
12 combination of several of the following methods of distribution of the accumulated
13 balance:
- 14 a. A lump sum distribution to the recipient.
- 15 b. A lump sum direct rollover to another qualified plan, to the extent allowed by
16 federal law.
- 17 c. Periodic distributions, as authorized by the board.
- 18 d. No current distribution, in which case the accumulated balance must remain in
19 the plan until the former participating member or refund beneficiary elects a
20 method or methods of distribution under this section, to the extent allowed by
21 federal law.
- 22 A surviving spouse beneficiary may elect one or a combination of several of the
23 methods of distribution provided in subdivisions a, b, or c. A beneficiary who is not
24 the surviving spouse may only choose a lump sum distribution of the accumulated
25 balance.
- 26 4. If the former participating member's vested account balance is less than five
27 thousand dollars, the board shall automatically refund the member's vested
28 account balance upon termination of employment. The member may waive the
29 refund if the member submits a written statement to the board, within one hundred
30 twenty days after termination, requesting that the member's vested account
31 balance remain in the plan.

- 1 **SECTION 15. REPEAL.** Section 54-52-19.2 of the North Dakota Century Code is
- 2 repealed.