

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

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

12 **SECTION 1. AMENDMENT.** Subsections 2 and 5 of section 39-03.1-11 of the North
13 Dakota Century Code are amended and reenacted as follows:

14 2. Retirement benefits are based on the contributor's final average salary. Final
15 average salary is the average of the highest salary received by the contributor for
16 any thirty-six months employed during the last one hundred twenty months of
17 employment. For contributors who ~~retire~~ terminate employment on or after ~~July 1,~~
18 ~~2009~~ August 1, 2010, final average salary is the average of the highest salary
19 received by the contributor for any thirty-six months employed during the last one
20 hundred eighty months of employment. For contributors who terminate
21 employment between July 31, 2005, and August 1, 2010, final average salary is
22 the average of the highest salary received by the member for any thirty-six months
23 employed during the period for which the board has appropriate and accurate
24 salary records on its electronic data base, but that period may not be more than the

1 last one hundred eighty months of employment. Months not employed or months
2 in which employment was not as a permanent employee are excluded in arriving at
3 the thirty-six months to be used for the purpose of computing an average. If the
4 contributor has worked for less than thirty-six months at the postponed retirement
5 date, the final average salary is the average salary for all months of employment.
6 5. On termination of employment after completing ten years of eligible employment
7 but before the normal retirement date, a contributor who does not elect to receive
8 early retirement benefits is eligible to receive deferred vested retirement benefits.
9 The deferred benefits are payable beginning on the contributor's normal retirement
10 date ~~and are one hundred percent of the contributor's normal retirement benefits in~~
11 one of the forms provided in this section. Contributors who have delayed or
12 inadvertently failed to apply for retirement benefits to commence on their normal
13 retirement date may choose to receive either a lump sum payment equal to the
14 amount of missed payments, or an actuarial increase to the form of benefit the
15 member has selected, which increase must reflect the missed payments. The final
16 average salary used for calculating deferred vested retirement benefits must be
17 increased annually, from the later of the date of termination of employment or
18 July 1, 1991, until the date the contributor begins to receive retirement benefits
19 from the fund, at a rate as determined by the board not to exceed a rate that would
20 be approximately equal to annual salary increases provided state employees
21 pursuant to action by the legislative assembly.

22 **SECTION 2. AMENDMENT.** Section 39-03.1-11.2 of the North Dakota Century Code
23 is amended and reenacted as follows:

24 **39-03.1-11.2. Internal Revenue Code compliance.** The board shall administer the
25 plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section
26 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2005~~ 2007, as it applies for
27 governmental plans.

28 **SECTION 3.** A new subsection to section 39-03.1-28 of the North Dakota Century Code
29 is created and enacted as follows:

30 A person if the information relates to an employer service purchase under section
31 39-03.1-10.2, but the information must be limited to the member's name and

1 employer, the retirement program in which the member participates, the amount of
2 service credit purchased by the employer, and the total amount expended by the
3 employer for that service credit purchase, and that information may only be
4 obtained from the member's employer.

5 **SECTION 4. AMENDMENT.** Section 39-03.1-30 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **39-03.1-30. Conversion of sick leave.** ~~At termination of eligible employment a~~ A
8 member is entitled to credit in the retirement system for each month of unused sick leave, as
9 certified by the employer, if the member or the member's employer pays an amount equal to the
10 member's final average salary, times the number of months of sick leave converted, times the
11 employer and employee contribution, plus the required contribution for the retiree health
12 benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full
13 month for purposes of conversion to service credit. A member may convert all of the member's
14 certified sick leave or a part of that person's certified sick leave. ~~All conversion payments must~~
15 ~~be made within sixty days of termination and before the member receives a retirement annuity~~
16 ~~unless the member has submitted an approved payment plan to the board.~~

17 **SECTION 5. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **54-52-02.9. Participation by temporary employees.** A temporary employee may
20 elect, within one hundred eighty days of beginning employment, to participate in the public
21 employees retirement system and receive credit for service after enrollment. The temporary
22 employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths
23 percent times the temporary employee's present monthly salary. The temporary employee
24 shall also pay monthly to the retiree health benefit fund established under section 54-52.1-03.2
25 one percent times the temporary employee's present monthly salary. This contribution must be
26 recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay
27 the temporary employee's contributions. A temporary employee may continue to participate as
28 a temporary employee in the public employees retirement system until termination of
29 employment or reclassification of the temporary employee as a permanent employee. A
30 temporary employee may not purchase any additional credit, including additional credit under
31 section 54-52-17.4 or past service under section 54-52-02.6.

1 **SECTION 6. AMENDMENT.** Subsections 2 and 5 of section 54-52-17 of the North
2 Dakota Century Code are amended and reenacted as follows:

- 3 2. Retirement benefits are calculated from the participating member's final average
4 salary, which is the average of the highest salary received by the member for any
5 thirty-six months employed during the last one hundred twenty months of
6 employment. For members who ~~retire~~ terminate employment on or after ~~July 1,~~
7 ~~2009~~ August 1, 2010, final average salary is the average of the highest salary
8 received by the member for any thirty-six months employed during the last one
9 hundred eighty months of employment. For members who terminate employment
10 between July 31, 2005, and August 1, 2010, final average salary is the average of
11 the highest salary received by the member for any thirty-six months employed
12 during the period for which the board has appropriate and accurate salary records
13 on its electronic data base, but that period may not be more than the last one
14 hundred eighty months of employment. Months not employed are excluded in
15 arriving at the thirty-six months to be used for the purpose of computing an
16 average. If the participating member has worked for less than thirty-six months at
17 the normal retirement date, the final average salary is the average salary for the
18 total months of employment.
- 19 5. Upon termination of employment after completing three years of eligible
20 employment, except for supreme and district court judges, who must complete five
21 years of eligible employment, but before normal retirement date, a member who
22 does not elect to receive early retirement benefits is eligible to receive deferred
23 vested retirement benefits payable commencing on the member's normal
24 retirement date ~~equal to one hundred percent of the member's accrued single life~~
25 ~~benefits~~ in one of the optional forms provided in subsection 9. Members who have
26 delayed or inadvertently failed to apply for retirement benefits to commence on
27 their normal retirement date may choose to receive either a lump sum payment
28 equal to the amount of missed payments, or an actuarial increase to the form of
29 benefit the member has selected, which increase must reflect the missed
30 payments.

1 **SECTION 7.** A new subsection to section 54-52-26 of the North Dakota Century Code
2 is created and enacted as follows:

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

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

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

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

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

28 **SECTION 10. AMENDMENT.** Section 54-52-29 of the North Dakota Century Code is
29 amended and reenacted as follows:

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

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

17 **SECTION 11. AMENDMENT.** Section 54-52.6-09.2 of the North Dakota Century Code
18 is amended and reenacted as follows:

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

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

29 **SECTION 12. AMENDMENT.** Subsection 4 of section 54-52.6-13 of the North Dakota
30 Century Code is amended and reenacted as follows:

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