

**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2048  
(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System Board)

AN ACT to create and enact a new subsection to section 39-03.1-28 and a new subsection to section 54-52-26 of the North Dakota Century Code, relating to confidentiality of retirement records; and to amend and reenact subsections 7 and 8 of section 39-03.1-08.2, subsections 2 and 5 of section 39-03.1-11, sections 39-03.1-11.2, 39-03.1-30, and 54-52-02.9, subsections 2 and 5 of section 54-52-17, subsections 1, 4, 5, and 6 of section 54-52-17.4, sections 54-52-27, 54-52-28, 54-52-29, 54-52.6-09.2, and 54-52.6-10, and subsection 4 of section 54-52.6-13 of the North Dakota Century Code, relating to terms, final average salary calculations, payment of delayed retirement benefits, conversion of sick leave, temporary employee purchase of service credit, compliance with the Internal Revenue Code, employer service credit purchase, automatic refund of account balances, and vesting under the highway patrolmen's retirement and public employees retirement systems.

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

**SECTION 1. AMENDMENT.** Subsections 7 and 8 of section 39-03.1-08.2 of the North Dakota Century Code are amended and reenacted as follows:

7. In addition to service credit identified in this section, a ~~member~~ contributor may purchase up to five years of service credit.
8. Pursuant to rules adopted by the board, the board may allow a ~~member~~ contributor to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If a ~~member~~ contributor elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 2 of section 39-03.1-09 apply to the purchase arrangement.

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

2. Retirement benefits are based on the contributor's final average salary. Final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred twenty months of employment. For contributors who ~~retire~~ terminate employment on or after July 1, 2009 August 1, 2010, final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred eighty months of employment. For contributors who terminate employment between July 31, 2005, and August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on its electronic data base, but that period may not be more than the last one hundred eighty months of employment. Months not employed or months in which employment was not as a permanent employee are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the contributor has worked for less than thirty-six months at the postponed retirement date, the final average salary is the average salary for all months of employment.
5. On termination of employment after completing ten years of eligible employment but before the normal retirement date, a contributor who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits. The deferred benefits

are payable beginning on the contributor's normal retirement date ~~and are one hundred percent of the contributor's normal retirement benefits~~ in one of the forms provided in this section. Contributors who have delayed or inadvertently failed to apply for retirement benefits to commence on their normal retirement date may choose to receive either a lump sum payment equal to the amount of missed payments, or an actuarial increase to the form of benefit the member has selected, which increase must reflect the missed payments. The final average salary used for calculating deferred vested retirement benefits must be increased annually, from the later of the date of termination of employment or July 1, 1991, until the date the contributor begins to receive retirement benefits from the fund, at a rate as determined by the board not to exceed a rate that would be approximately equal to annual salary increases provided state employees pursuant to action by the legislative assembly.

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

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

**SECTION 4.** A new subsection to section 39-03.1-28 of the North Dakota Century Code is created and enacted as follows:

A person if the information relates to an employer service purchase under section 39-03.1-10.2, but the information must be limited to the member's name and employer, the retirement program in which the member participates, the amount of service credit purchased by the employer, and the total amount expended by the employer for that service credit purchase, and that information may only be obtained from the member's employer.

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

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

**SECTION 6. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

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

employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

**SECTION 7. AMENDMENT.** Subsections 2 and 5 of section 54-52-17 of the North Dakota Century Code are amended and reenacted as follows:

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

**SECTION 8. AMENDMENT.** Subsections 1, 4, 5, and 6 of section 54-52-17.4 of the North Dakota Century Code are amended and reenacted as follows:

1. A participating member may elect to purchase credit for years of service and prior service for which the participating member is not presently receiving credit. A participating member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
  - a. Active prior employment in the armed forces of the United States, except as provided in section 54-52-17.14, for up to four years of credit.
  - b. Employment as a permanent employee by a public employer either within or outside the state of North Dakota.
  - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
  - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
  - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.

- f. Employment as a permanent employee by the federal government.
4. The participating member may purchase credit under this section, or the participating member's employer may purchase for the participating member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the participating member purchases credit pursuant to subdivision d of subsection 1, the participating member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the participating member received upon taking a refund of the participating member's account balance, plus interest at the actuarial rate of return from the time the participating member was issued the refund. If the participating member is not repurchasing all of the credit originally refunded, the participating member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the participating member seeks to repurchase, and adding interest at the actuarial rate of return. The participating member or the participating member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.
5. Pursuant to rules adopted by the board, the board may allow a participating member to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If the participating member elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 3 of section 54-52-05 apply to the purchase arrangement.
6. In addition to service credit identified in this section, a vested participating member may purchase up to five years of service credit unrelated to any other eligible service.

**SECTION 9.** A new subsection to section 54-52-26 of the North Dakota Century Code is created and enacted as follows:

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

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

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

**SECTION 11. AMENDMENT.** Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 12. AMENDMENT.** Section 54-52-29 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 13. AMENDMENT.** Section 54-52.6-09.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 14. AMENDMENT.** Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-10. Vesting.** A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:

1. Upon completion of two years of service, fifty percent.
2. Upon completion of three years of service, seventy-five percent.

3. Upon completion of four years of service, one hundred percent.

A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan pursuant to this chapter, must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

**SECTION 15. AMENDMENT.** Subsection 4 of section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

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

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President of the Senate

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Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2048.

Senate Vote:    Yeas    45        Nays    0        Absent    2

House Vote:    Yeas    91        Nays    0        Absent    3

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State