

10059.0100

Sixty-second  
Legislative Assembly  
of North Dakota

Introduced by

(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 subsection 1 of section 39-03.1-11.2, sections 39-03.1-14.1 and 54-52-03, subsections 3 and 6  
3 of section 54-52-17, section 54-52-27, subsection 1 of section 54-52-28, subsection 3 of section  
4 54-52.1-03, and subsection 3 of section 54-52.6-09 of the North Dakota Century Code, relating  
5 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.** The  
19 state board of higher education has all the powers and shall perform all the duties necessary to  
20 the control and management of the institutions described in this chapter. In addition to the  
21 powers and duties specified in section 6 of article VIII of the Constitution of North Dakota, the  
22 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  
3                   duties thereof, provided that the consideration of the appointment or removal  
4                   of any such personnel shall be in executive session if the board chooses  
5                   unless the individual involved requests that the meeting be open to other  
6                   individuals or to 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  
9                   prescribe the commissioner's duties.
- 10                  c.   Appoint and remove all university system office personnel, fix their salaries  
11                  within the limits of legislative appropriations, fix their terms of office, and  
12                  prescribe their duties.
- 13                  2.   Authorize the employment of law enforcement officers having concurrent  
14                  jurisdiction with other law enforcement officers to enforce laws and regulations at  
15                  its institutions.
- 16                  3.   Set tuition and fees.
- 17                  4.   a.   Establish a retirement program as an alternative to chapter 15-39.1 for  
18                  university system employees subject to the following guidelines:
- 19                       (1)   Benefits under the program must be provided through annuity contracts  
20                       purchased by the board but which become the property of the  
21                       participants;
- 22                       (2)   The cost of the annuity contracts must be defrayed by contributions  
23                       made pursuant to rules of the state board of higher education;
- 24                       (3)   Eligible employees appointed before July 1, 1973, shall participate in  
25                       the alternate retirement program only by their individual election. When  
26                       the electing eligible employee is a member of the teachers' fund for  
27                       retirement, the employee's assessments and employer's contributions  
28                       together with interest credited at the current rate for one-year  
29                       certificates then being paid by the Bank of North Dakota must be  
30                       transferred to the employee's account in the alternate program. The  
31                       election must be made before July 1, 1980, and shall relinquish all

- 1 rights the eligible employee or the employee's beneficiary may have to  
2 benefits provided in chapters 15-39 and 15-39.2; and
- 3 (4) Employees of the university system who are members of the public  
4 employees retirement system under chapter 54-52 or 54-52.6 and who  
5 become entitled to participate in the alternate retirement program are  
6 entitled to a special annuity purchase in the alternate retirement  
7 program in accordance with this subdivision. An eligible employee who  
8 consents to have that employee's contribution included is entitled to  
9 have that employee's contribution and employer's contribution, with  
10 interest, in the public employees retirement system fund, used by the  
11 retirement board of the public employees retirement system to  
12 purchase for that employee an annuity in the alternate retirement  
13 program in lieu of any other rights under the public employees  
14 retirement fund. However, before the employer's contribution may be  
15 used for an annuity purchase, the employee's combined years of  
16 service with the public employees retirement system and the alternate  
17 retirement program must equal or exceed the years of service  
18 necessary to be eligible for retirement benefits under the public  
19 employees retirement system. An employee who transferred from the  
20 public employees retirement system before March 30, 1987, and who  
21 received a refund of that employee's contribution is entitled to have the  
22 employer's contribution, with interest, used to purchase an annuity even  
23 if that employee did not purchase an annuity in the alternate employee  
24 program with the employee's contribution. If an employee makes the  
25 election allowed under this subdivision, that employee relinquishes all  
26 rights the employee or any of the employee's beneficiaries may have  
27 had to benefits provided under ~~chapter~~ chapters 54-52 and 54-52.6.
- 28 b. Provide for the administration of the alternate retirement program and  
29 establish rules for the program consistent with this subsection. This  
30 subsection does not derogate any existing retirement programs approved by  
31 the board.

- 1           5. Determine policy for purchasing by the university system in coordination with the  
2           office of management and budget as provided by law.
- 3           6. Establish by rule an early retirement program for faculty and officers of the board  
4           as defined by the board. The limitations on severance pay pursuant to section  
5           54-14-04.3 and on requiring the employee to pay contributions to continue on the  
6           state uniform group insurance program upon retirement or upon termination of  
7           employment pursuant to section 54-52.1-03 do not apply to the early retirement  
8           program.
- 9           7. Adopt rules to protect the confidentiality of student records, medical records, and,  
10          consistent with section 44-04-18.4, trade secret, proprietary, commercial, and  
11          financial information.
- 12          8. Authorize and encourage university system entities to enter into partnerships,  
13          limited liability companies, joint ventures, or other contractual arrangements with  
14          private business and industry for the purpose of business or industrial development  
15          or fostering basic and applied research or technology transfer.
- 16          9. Adopt rules promoting research, encouraging development of intellectual property  
17          and other inventions and discoveries by university system employees, and  
18          protecting and marketing the inventions and discoveries. The rules must govern  
19          ownership or transfer of ownership rights and distribution of income that may be  
20          derived from an invention or discovery resulting from research or employment in  
21          the university system. The rules may provide for transfer of ownership rights or  
22          distribution of income to a private, nonprofit entity created for the support of the  
23          university system or one of its institutions.

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

- 26          6. If before retiring a contributor dies after completing ten years of eligible  
27          employment, the board shall pay the contributor's accumulated deductions to the  
28          contributor's designated beneficiary as provided in this subsection. If the  
29          contributor has designated an alternate beneficiary with the surviving spouse's  
30          written consent, the board shall pay the contributor's account balance to the named  
31          beneficiary. If the contributor has named more than one primary beneficiary, the

1 board shall pay the contributor's account balance to the named primary  
2 beneficiaries in the percentages designated by the contributor or, if the contributor  
3 has not designated a percentage for the beneficiaries, in equal percentages. If one  
4 or more of the primary beneficiaries has predeceased the contributor, the board  
5 shall pay the predeceased beneficiary's share to the remaining primary  
6 beneficiaries. If there are no remaining primary beneficiaries, the board shall pay  
7 the contributor's account balance to the contingent beneficiaries in the same  
8 manner. If there are no remaining designated beneficiaries, the board shall pay  
9 the contributor's account balance to the contributor's estate. If the contributor has  
10 not designated an alternate beneficiary under this section or the surviving spouse  
11 is the beneficiary, the surviving spouse of the contributor may select one of the  
12 following optional forms of payment:

- 13 a. A lump sum payment of the contributor's accumulated deductions as of the  
14 date of death.
- 15 b. ~~Payments for sixty months as calculated for the deceased contributor as if the~~  
16 ~~contributor were age fifty five at the date of death.~~
- 17 e. Payment of a monthly retirement benefit equal to fifty percent of the deceased  
18 contributor's accrued normal retirement benefits until the spouse dies.

19 **SECTION 3. AMENDMENT.** Subsection 1 of section 39-03.1-11.2 of the North Dakota  
20 Century Code is amended and reenacted as follows:

- 21 1. The board shall administer the plan in compliance with section 415, section  
22 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code  
23 in effect on August 1, ~~2009~~ 2011, as it applies for governmental plans.

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

26 **39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of**  
27 **benefits.**

- 28 1. For the purpose of determining eligibility for benefits under this chapter, a  
29 member's years of service is the total of the years of service earned under this  
30 chapter and the years of service employment or years of service credit earned in

- 1 any number of the following, the total of which may not exceed twelve months of  
2 credit per year:
- 3 a. The public employees retirement system.
  - 4 b. The teachers' fund for retirement.
  - 5 c. The teachers' insurance and annuity association of America - college  
6 retirement equities fund (TIAA-CREF), for service credit earned while  
7 employed by North Dakota institutions of higher education.
- 8 2. If a member terminates eligible employment under this chapter, if that member has  
9 not received a refund of the member's accumulated deductions, and if that member  
10 begins eligible employment in a plan described in subdivision a or b of  
11 subsection 1, that member may elect to remain an inactive member of the system  
12 without refund of the member's accumulated deductions. The election must be  
13 made within ninety days after beginning the eligible employment. The board shall  
14 terminate the inactive status of a member under this subsection if the member  
15 gains eligible employment under this chapter or if the member terminates eligible  
16 employment under a plan described in subdivision a or b of subsection 1.
- 17 3. Pursuant to rules adopted by the board, a member who has service credit in the  
18 system and in any of the alternate plans described in subdivision a or b of  
19 subsection 1 is entitled to benefits under this chapter. The employee may elect to  
20 have benefits calculated using the benefit formula in section 39-03.1-11 under  
21 either of the following calculation methods:
- 22 a. By using the average of the highest salary received by the member for any  
23 ~~consecutive~~ thirty-six months employed during the last one hundred twenty  
24 months of employment in the highway patrolmen's retirement system. If the  
25 participating member has worked for less than thirty-six months at retirement,  
26 the final average salary is the average salary for the total months of  
27 employment.
  - 28 b. Using the average of the highest salary received by the member for any  
29 thirty-six ~~consecutive~~ months during the last one hundred twenty months of  
30 employment, with service credit not to exceed one month in any month when  
31 combined with the service credit earned in the alternate retirement system.

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

3           **SECTION 5. AMENDMENT.** Section 54-52-03 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **54-52-03. Governing authority.** A state agency is hereby created to constitute the  
6 governing authority of the system to consist of a board of seven persons known as the  
7 retirement board. No more than one elected member of the board may be in the employ of a  
8 single department, institution, or agency of the state or in the employ of a political subdivision.  
9 No employee of the public employees retirement system or the state retirement and investment  
10 office may serve on the board.

- 11           1. One member of the board must be appointed by the governor to serve a term of  
12           five years. The appointee must be a North Dakota citizen who is not a state or  
13           political subdivision employee and who by experience is familiar with money  
14           management. The citizen member is chairman of the board.
- 15           2. One member of the board must be appointed by the attorney general from the  
16           attorney general's legal staff and shall serve a term of five years.
- 17           3. The state health officer appointed under section 23-01-05 is a member of the  
18           board.
- 19           4. Three board members must be elected by and from among the active participating  
20           members, members of the retirement plan established under chapter 54-52.6,  
21           members of the retirement plan established under chapter 39-03.1, and members  
22           of the job service North Dakota retirement plan. Employees who have terminated  
23           their employment for whatever reason are not eligible to serve as elected members  
24           of the board under this subsection. Board members must be elected to a five-year  
25           term pursuant to an election called by the board. Notice of board elections must be  
26           given to all active participating members. The time spent in performing duties as a  
27           board member may not be charged against any employee's accumulated annual or  
28           any other type of leave.
- 29           5. One board member must be elected by and from among those persons who are  
30           receiving retirement benefits ~~or who are eligible to receive deferred vested~~  
31           retirement benefits under this chapter. The board shall call the election and must

1 give prior notice of the election to the persons eligible to participate in the election  
2 pursuant to this subsection. The board member shall serve a term of five years.

3 6. The members of the board are entitled to receive sixty-two dollars and fifty cents  
4 per day compensation and necessary mileage and travel expenses as provided in  
5 sections 44-08-04 and 54-06-09. This is in addition to any other pay or allowance  
6 due the chairman or a member, plus an allowance for expenses they may incur  
7 through service on the board.

8 7. A board member shall serve a five-year term and until the board member's  
9 successor qualifies. Each board member is entitled to one vote, and four of the  
10 seven board members constitute a quorum. Four votes are necessary for  
11 resolution or action by the board at any meeting.

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

14 3. Retirement dates are defined as follows:

15 a. Normal retirement date, except for a national guard security officer or  
16 firefighter or a peace officer or correctional officer employed by the bureau of  
17 criminal investigation or by a political subdivision, is:

18 (1) The first day of the month next following the month in which the  
19 member attains the age of sixty-five years; or

20 (2) When the member has a combined total of years of service credit and  
21 years of age equal to eighty-five and has not received a retirement  
22 benefit under this chapter.

23 b. Normal retirement date for a national guard security officer or firefighter is the  
24 first day of the month next following the month in which the national guard  
25 security officer or firefighter attains the age of fifty-five years and has  
26 completed at least three consecutive years of employment as a national guard  
27 security officer or firefighter immediately preceding retirement.

28 c. Normal retirement date for a peace officer or correctional officer employed by  
29 a political subdivision is:

30 (1) The first day of the month next following the month in which the peace  
31 officer or correctional officer attains the age of fifty-five years and has

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

1           g. Disability retirement date is the first day of the month after a member  
2           becomes permanently and totally disabled, according to medical evidence  
3           called for under the rules of the board, and has completed at least one  
4           hundred eighty days of eligible employment. For supreme and district court  
5           judges, permanent and total disability is based solely on a judge's inability to  
6           perform judicial duties arising out of physical or mental impairment, as  
7           determined pursuant to rules adopted by the board or as provided by  
8           subdivision a of subsection 3 of section 27-23-03. A member is eligible to  
9           receive disability retirement benefits only if the member:

- 10           (1) Became disabled during the period of eligible employment; and  
11           (2) Applies for disability retirement benefits within twelve months of the  
12           date the member terminates employment.

13           A member is eligible to continue to receive disability benefits as long as the  
14           permanent and total disability continues and the member submits the  
15           necessary documentation and undergoes medical testing required by the  
16           board, or for as long as the member participates in a rehabilitation program  
17           required by the board, or both. If the board determines that a member no  
18           longer meets the eligibility definition, the board may discontinue the disability  
19           retirement benefit. The board may pay the cost of any medical testing or  
20           rehabilitation services it deems necessary and these payments are  
21           appropriated from the retirement fund for those purposes.

22           6. If before retiring a member dies after completing three years of eligible  
23           employment, except for supreme and district court judges, who must have  
24           completed five years of eligible employment, the board shall pay the member's  
25           account balance to the member's designated beneficiary as provided in this  
26           subsection. If the member has designated an alternate beneficiary with the  
27           surviving spouse's written consent, the board shall pay the member's account  
28           balance to the named beneficiary. If the member has named more than one  
29           primary beneficiary, the board shall pay the member's account balance to the  
30           named primary beneficiaries in the percentages designated by the member or, if  
31           the member has not designated a percentage for the beneficiaries, in equal

1 percentages. If one or more of the primary beneficiaries has predeceased the  
2 member, the board shall pay the predeceased beneficiary's share to the remaining  
3 primary beneficiaries. If any beneficiary survives the member, yet dies before  
4 distribution of the beneficiary's share, the beneficiary must be treated as if the  
5 beneficiary predeceased the member. If there are no remaining primary  
6 beneficiaries, the board shall pay the member's account balance to the contingent  
7 beneficiaries in the same manner. If there are no remaining designated  
8 beneficiaries, the board shall pay the member's account balance to the member's  
9 estate. If the member has not designated an alternate beneficiary or the surviving  
10 spouse is the beneficiary, the surviving spouse of the member may select a form of  
11 payment as follows:

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

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

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

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

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

23 (2) Payment of a monthly retirement benefit equal to fifty percent of the  
24 deceased member's accrued single life retirement benefits until the  
25 spouse dies.

26 (3) If the member dies on or after the member's normal retirement date, the  
27 payment of a monthly retirement benefit equal to an amount that would  
28 have been paid to the surviving spouse if the member had retired on  
29 the day of the member's death and had selected a one hundred percent  
30 joint and survivor annuity, payable until the spouse dies. A surviving  
31 spouse who received a benefit under this subsection as of July 31,

1 1995, is entitled to the higher of that person's existing benefit or the  
2 equivalent of the accrued benefit available under the one hundred  
3 percent joint and survivor provision as if the deceased member were of  
4 normal retirement age, with the increase payable beginning August 1,  
5 1995.

6 **SECTION 7. AMENDMENT.** Section 54-52-27 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-52-27. Purchase of sick leave credit.** A member is entitled to credit in the  
9 retirement system for each month of unused sick leave, as certified by the member's employer,  
10 if the member or the member's employer pays an amount equal to the member's final average  
11 salary, times the number of months of sick leave converted, times the percent of employer and  
12 employee contributions to the retirement program of the member, plus the required contribution  
13 for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are  
14 deemed to be a full month for purposes of conversion to service credit. A member may convert  
15 all of the member's certified sick leave or a part of the member's certified sick leave. ~~All~~  
16 ~~conversion payments must be made within sixty days of termination of employment and before~~  
17 ~~the member receives a retirement annuity unless the member has submitted an approved~~  
18 ~~payment plan to the board.~~

19 **SECTION 8. AMENDMENT.** Subsection 1 of section 54-52-28 of the North Dakota  
20 Century Code is amended and reenacted as follows:

21 1. The board shall administer the plan in compliance with section 415, section  
22 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code  
23 in effect on August 1, ~~2009~~ 2011, as it applies for governmental plans.

24 **SECTION 9. AMENDMENT.** Subsection 3 of section 54-52.1-03 of the North Dakota  
25 Century Code is amended and reenacted as follows:

26 3. A retiree who has accepted a periodic distribution from the defined contribution  
27 retirement plan pursuant to section 54-52.6-13 who the board determines is eligible  
28 for participation in the uniform group insurance program or has accepted a  
29 retirement allowance from the public employees retirement system, the highway  
30 patrolmen's retirement system, the teachers' insurance and annuity association of  
31 America - college retirement equities fund for service credit earned while employed

1 by North Dakota institutions of higher education, the retirement system established  
2 by job service North Dakota under section 52-11-01, the judges' retirement system  
3 established under chapter 27-17, or the teachers' fund for retirement may elect to  
4 participate in the uniform group under this chapter without meeting minimum  
5 requirements at age sixty-five, when the member's spouse reaches age sixty-five,  
6 upon the receipt of a benefit, or when the spouse terminates employment. If a  
7 retiree or surviving spouse does not elect to participate at the times specified in this  
8 subsection, the retiree or surviving spouse must meet the minimum requirements  
9 established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each  
10 retiree or surviving spouse shall pay directly to the board the premiums in effect for  
11 the coverage then being provided. A retiree or surviving spouse who has met the  
12 initial eligibility requirements of this subsection to begin participation in the uniform  
13 group insurance program remains eligible as long as the retiree maintains the  
14 retiree's participation in the program by paying the required premium pursuant to  
15 rules adopted by the board.

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

- 18 3. Each employer, at its option, may pay the employee contributions required by this  
19 section for all compensation earned after December 31, 1999. The amount paid  
20 must be paid by the employer in lieu of contributions by the employee. If the  
21 employer decides not to pay the contributions, the amount that would have been  
22 paid will continue to be deducted from the employee's compensation. If  
23 contributions are paid by the employer, they must be treated as employer  
24 contributions in determining tax treatment under this code and the federal Internal  
25 Revenue Code. Contributions paid by the employer may not be included as gross  
26 income of the employee in determining tax treatment under this code and the  
27 federal Internal Revenue Code until they are distributed or made available. The  
28 employer shall pay these employee contributions from the same source of funds  
29 used in paying compensation to the employee. The employer shall pay these  
30 contributions by effecting an equal cash reduction in the gross salary of the  
31 employee or by an offset against future salary increases or by a combination of a

1           reduction in gross salary and offset against future salary increases. Employee  
2           contributions paid by the employer must be treated for the purposes of this chapter  
3           in the same manner and to the same extent as employee contributions made  
4           before the date on which employee contributions were assumed by the employer.  
5           An employer shall exercise its option under this subsection by ~~December 1, 1999,~~  
6           ~~and shall report~~ reporting its choice to the board in writing. ~~The option chosen may~~  
7           ~~not be revoked for the remainder of the biennium. Thereafter, the option choice~~  
8           ~~must be forwarded to the board, in writing, by June fifteenth of each odd-numbered~~  
9           ~~year.~~