

HOUSE BILL NO.

Introduced by

Representative Wald

1 A BILL for an Act to create and enact a new section to chapter 15-39.1 and chapter 15-39.3 of
2 the North Dakota Century Code, relating to a defined contribution retirement plan for teachers;
3 to amend and reenact sections 15-39.1-09, 15-39.1-30, 39-03.1-02, and 39-03.1-07,
4 subsection 4 of section 54-52-01, and sections 54-52-02.3, 54-52-02.5, 54-52-02.9, 54-52.6-01,
5 54-52.6-02, and 54-52.6-09 of the North Dakota Century Code, relating to defined contribution
6 retirement plans for teachers and state employees; to provide a penalty; and to provide a
7 continuing appropriation.

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

9 **SECTION 1.** A new section to chapter 15-39.1 of the North Dakota Century Code is
10 created and enacted as follows:

11 **Teachers' fund for retirement closed to new members.** Notwithstanding any other
12 provision of law, after July 31, 2011, the teachers' fund for retirement plan established under
13 this chapter is closed to new members.

14 **SECTION 2. AMENDMENT.** Section 15-39.1-09 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **15-39.1-09. Membership in fund and assessments - Employer payment of**
17 **employee contribution.**

18 1. Except as otherwise provided by law, every teacher first employed before
19 August 1, 2011, is a member of the fund and must be assessed upon the teacher's
20 salary seven and seventy-five hundredths percent per annum, which must be
21 deducted, certified, and paid monthly to the fund by the disbursing official of the
22 governmental body by which the teacher is employed. Except as otherwise
23 provided by law, every governmental body employing a teacher shall pay to the
24 fund eight and seventy-five hundredths percent per annum of the salary of each

- 1 teacher employed by it. The disbursing official of the governmental body shall
2 certify the governmental body payments and remit the payments monthly to the
3 fund.
- 4 2. Each employer, at its option, may pay the teacher contributions required by
5 subsection 1 for all compensation earned after June 30, 1983. The amount paid
6 must be paid by the employer in lieu of contributions by the employee. If an
7 employer decides not to pay the contributions, the amount that would have been
8 paid will continue to be deducted from compensation. If contributions are paid by
9 the employer, they must be treated as employer contributions in determining
10 income tax treatment under this code and the federal Internal Revenue Code. If
11 contributions are paid by the employer, they may not be included as gross income
12 of the teacher in determining tax treatment under this code and the Internal
13 Revenue Code until they are distributed or made available. The employer shall
14 pay these teacher contributions from the same source of funds used in paying
15 compensation to the teachers. The employer shall pay these contributions by
16 effecting an equal cash reduction in the gross salary of the employee or by an
17 offset against future salary increases. If teacher contributions are paid by the
18 employer, they must be treated for the purposes of this chapter in the same
19 manner and to the same extent as teacher contributions made prior to the date the
20 contributions were assumed by the employer. The option given employers by this
21 subsection must be exercised in accordance with rules adopted by the board.
- 22 3. A person, except the superintendent of public instruction, who is certified to teach
23 in this state by the education standards and practices board and who is first
24 employed and entered upon the payroll of the superintendent of public instruction
25 after January 6, 2001, and before August 1, 2011, may elect to become a
26 participating member of the public employees retirement system. An election
27 made by a person to participate in the public employees retirement system under
28 this subsection is irrevocable. Nonteaching employees of the superintendent of
29 public instruction, including the superintendent of public instruction, may elect to
30 transfer to the public employees retirement system before August 1, 2011,
31 pursuant to section 54-52-02.13. Employees of the state board for career and

1 technical education may elect to transfer to the public employees retirement
2 system before August 1, 2011, pursuant to section 54-52-02.14.

3 4. An individual who is first employed and entered upon the payroll of the state board
4 for career and technical education after July 1, 2007, may elect to become a
5 participating member of the public employees retirement system. An election
6 made by an individual to participate in the public employees retirement system
7 under this subsection is irrevocable.

8 **SECTION 3. AMENDMENT.** Section 15-39.1-30 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **15-39.1-30. Confidentiality of records.** All records relating to the retirement benefits
11 of a member or a beneficiary under this chapter and chapter 15-39.3 are confidential and are
12 not public records. The information and records may be disclosed, under rules adopted by the
13 board, only to:

- 14 1. A person to whom the teacher has given written consent to have the information
15 disclosed.
- 16 2. A person legally representing the teacher, upon proper proof of representation, and
17 unless the teacher specifically withholds consent.
- 18 3. A person authorized by a court order.
- 19 4. A member's participating employer, limited to information concerning the member's
20 years of service credit, years of age, employer and employee contribution
21 amounts, and salary. The board may share other types of information as needed
22 by the employer to validate the employer's compliance with existing state or federal
23 law. Any information provided to the member's participating employer under this
24 subsection must remain confidential except as provided in subsection 6.
- 25 5. The administrative staff of the public employees retirement system for purposes
26 relating to membership and benefits determination.
- 27 6. State or federal agencies for the purpose of validating member eligibility or
28 employer compliance with existing state or federal law.
- 29 7. Member interest groups approved by the board, limited to information concerning
30 the member's death.

- 1 8. A government child support enforcement agency for purposes of establishing
2 paternity or establishing, modifying, or enforcing a child support obligation of the
3 member.
- 4 9. The member's spouse or former spouse, that individual's legal representative, and
5 the judge presiding over the member's dissolution proceeding for purposes of
6 aiding the parties in drafting a qualified domestic relations order under section
7 15-39.1-12.2. The information disclosed under this subsection must be limited to
8 information necessary for drafting the order.
- 9 10. Beneficiaries designated by a participating member or a former participating
10 member to receive benefits after the member's death, but only after the member's
11 death. Information relating to beneficiaries may be disclosed to other beneficiaries
12 of the same member.
- 13 11. The general public, but only after the board has been unable to locate the member
14 for a period in excess of two years, and limited to the member's name and the fact
15 that the board has been unable to locate the member.
- 16 12. Any person if the board determines disclosure is necessary for treatment,
17 operational, or payment purposes, including the completion of necessary
18 documents.
- 19 13. A person if the information relates to an employer service purchase, but the
20 information must be limited to the member's name and employer, the retirement
21 program in which the member participates, the amount of service credit purchased
22 by the employer, and the total amount expended by the employer for that service
23 credit purchase. Information identified under this subsection may only be obtained
24 from the member's employer.

25 **SECTION 4.** Chapter 15-39.3 of the North Dakota Century Code is created and
26 enacted as follows:

27 **15-39.3-01. Definition of terms.** As used in this chapter, unless the context otherwise
28 requires:

- 29 1. "Board" means the board of trustees of the teachers' fund for retirement.
30 2. "Eligible employee" means a teacher.
31 3. "Employer" means a governmental body employing a teacher.

- 1 4. "Participating member" means an eligible employee participating in the defined
2 contribution retirement plan established under this chapter.
- 3 5. "Salary" means a member's earnings in eligible employment under this chapter for
4 teaching, supervisory, administrative, and extracurricular services during a school
5 year reported as salary on the member's federal income tax withholding
6 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.
7 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, 2011. "Salary"
8 includes bonus amounts paid to members for performance, retention, experience,
9 and other service-related bonuses, unless amounts are conditioned on or made in
10 anticipation of an individual member's retirement or termination. The annual salary
11 of each member taken into account in determining benefit accruals and
12 contributions may not exceed the annual compensation limits established under
13 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2011, as adjusted for increases in
14 the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1,
15 2011. "Salary" does not include:
- 16 a. Fringe benefits or side, nonwage, benefits that accompany or are in addition
17 to a member's employment, including insurance programs, annuities,
18 transportation allowances, housing allowances, meals, lodging, or expense
19 allowances, or other benefits provided by a member's employer.
- 20 b. Insurance programs, including medical, dental, vision, disability, life, long-term
21 care, workforce safety and insurance, or other insurance premiums or
22 benefits.
- 23 c. Payments for unused sick leave, personal leave, vacation leave, or other
24 unused leave.
- 25 d. Early retirement incentive pay, severance pay, or other payments conditioned
26 on or made in anticipation of retirement or termination.
- 27 e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- 28 f. Amounts received by a member in lieu of previously employer-provided
29 benefits or payments that are made on an individual selection basis.
- 30 g. Recruitment bonuses.

1 h. Other benefits or payments not defined in subdivisions a through g which the
2 board determines to be ineligible teachers' fund for retirement salary.

3 6. "Teacher" means:

4 a. Every person licensed by the education standards and practices board who is
5 contractually employed in teaching, supervisory, administrative, or
6 extracurricular services by a state institution, multidistrict special education
7 unit, area career and technology center, regional education association,
8 school board, or other governing body of a school district of this state,
9 including superintendent, assistant superintendent, business manager,
10 principal, assistant principal, and special teacher. For purposes of this
11 subdivision, "teacher" includes a person contractually employed by one of the
12 above employers to provide teaching, supervisory, administrative, or
13 extracurricular services to a separate state institution, state agency,
14 multidistrict special education unit, area career and technology center,
15 regional education association, school board, or other governing body of a
16 school district of this state under a third-party contract.

17 b. The superintendent of public instruction, every assistant superintendent of
18 public instruction, every county superintendent, every assistant
19 superintendent, every supervisor of instruction, the professional staff of the
20 department of career and technical education, the professional staff of the
21 center for distance education, and the professional staff of an interim school
22 district.

23 **15-39.3-02. Members.** An eligible employee who is first employed and entered upon
24 the payroll of that individual's employer after July 31, 2011, is a member of the defined
25 contribution retirement plan established under this chapter.

26 **15-39.3-03. Administration.** The board shall administer the defined contribution
27 retirement plan established under this chapter and the board or vendors contracted for by the
28 board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan.
29 The board has the exclusive authority and responsibility to employ or contract with personnel
30 and for services that the board determines necessary for the proper administration of and

1 investment of assets of the plan, including managerial, professional, legal, clerical, technical,
2 and administrative personnel or services.

3 **15-39.3-04. Direction of investments.** Each participating member shall direct the
4 investment of the individual's accumulated employer and employee contributions and earnings
5 to one or more investment choices within available categories of investment provided by the
6 board.

7 **15-39.3-05. Administrative expenses - Continuing appropriation.** The
8 administrative expenses of the plan must be paid by the participating members in a manner
9 determined by the board. The board or vendors contracted for by the board may charge
10 reasonable administrative expenses and deduct those expenses from a participating member's
11 account in the defined contribution retirement plan established under this chapter. The board
12 shall place any money deducted in an administrative expenses account with the state treasurer.
13 All moneys in the administrative expenses account, not otherwise appropriated, or so much of
14 the moneys as may be necessary, are appropriated to the board on a continuing basis for the
15 purpose of retaining a consultant as required for the administration of this chapter.

16 **15-39.3-06. Participation in other plans.** A participating member may not participate
17 in any other public sector retirement benefits plan for simultaneous service rendered to the
18 same public sector employer. However, this section does not prohibit a participating member
19 from participating in a retirement plan established by this state or other public sector employer
20 under the federal Internal Revenue Code.

21 **15-39.3-07. Contributions - Penalty.**

22 1. Each participating member must be assessed upon the teacher's salary seven and
23 seventy-five hundredths percent per annum, which must be deducted, certified,
24 and paid monthly to the participating member's account by the disbursing official of
25 the governmental body by which the teacher is employed.

26 2. Every governmental body employing a teacher shall pay to the participating
27 member's account eight and seventy-five hundredths percent per annum of the
28 salary of each teacher employed by it. The disbursing official of the governmental
29 body shall certify the governmental body payments and remit the payments
30 monthly to the participating member's account.

1 3. Each employer, at its option, may pay the teacher contributions required by
2 subsection 1 for all compensation earned after July 31, 2011. The amount paid
3 must be paid by the employer in lieu of contributions by the employee. If an
4 employer decides not to pay the contributions, the amount that would have been
5 paid will continue to be deducted from compensation. If contributions are paid by
6 the employer, they must be treated as employer contributions in determining
7 income tax treatment under this code and the federal Internal Revenue Code. If
8 contributions are paid by the employer, they may not be included as gross income
9 of the teacher in determining tax treatment under this code and the Internal
10 Revenue Code until they are distributed or made available. The employer shall
11 pay these contributions from the same source of funds used in paying
12 compensation to the teachers. The employer shall pay these contributions by
13 effecting an equal cash reduction in the gross salary of the employee or by an
14 offset against future salary increases. If teacher contributions are paid by the
15 employer, they must be treated for the purposes of this chapter in the same
16 manner and to the same extent as teacher contributions made prior to the date the
17 contributions were assumed by the employer. The option given employers by this
18 subsection must be exercised in accordance with rules adopted by the board.

19 **15-39.3-08. Acceptance of rollovers.** The plan may allow a participating member to
20 transfer or roll over funds from other qualified plans into the member's account under rules
21 adopted by the board.

22 **15-39.3-09. Military service under the Uniformed Services Employment and**
23 **Reemployment Rights Act - Member retirement credit.** A member reemployed under the
24 Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L.
25 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the
26 period of qualified military service. The required contribution for the credit must be made in the
27 same manner and by the same party as would have been made had the employee been
28 continuously employed. If the salary the member would have received during the period of
29 service is not reasonably certain, the member's average rate of compensation during the
30 twelve-month period immediately preceding the member's period of service or, if shorter, the
31 period of employment immediately preceding that period, times the number of months of credit

1 being purchased must be used. A member must be allowed up to three times the period of
2 military service or five years, whichever is less, to make any required payments. This provision
3 applies to all qualifying periods of military service since October 1, 1994. Any payments made
4 by the member to receive qualifying credit inconsistent with this provision must be refunded. An
5 employee shall make application to the employer for credit and provide a DD Form 214 to verify
6 service.

7 **15-39.3-10. Vesting.** A participating member is immediately one hundred percent
8 vested in that member's contributions made to that member's account under this chapter. A
9 participating member vests in the employer contributions made on that member's behalf to an
10 account under this chapter according to the following schedule:

- 11 1. Upon completion of two years of service, fifty percent.
- 12 2. Upon completion of three years of service, seventy-five percent.
- 13 3. Upon completion of four years of service, one hundred percent.

14 A participating member also becomes one hundred percent vested in the employer
15 contributions upon reaching age sixty-five. Any forfeiture as a result of the failure of a
16 participating member to vest in the employer contribution must be deposited in the
17 administrative expenses account.

18 **15-39.3-11. Refund beneficiaries.** A participating or former participating member may
19 nominate one or more individuals as a refund beneficiary by filing written notice of nomination
20 with the board. If the participating member or former participating member is married at the
21 time of the nomination and the participant's spouse is not the refund beneficiary for one
22 hundred percent of the account, the nomination is not effective unless the nomination is signed
23 by the participant's spouse. However, the board may waive this requirement if the spouse's
24 signature cannot be obtained because of extenuating circumstances.

25 **15-39.3-12. Qualified domestic relations orders.**

- 26 1. The board or a vendor contracted for by the board shall apportion a participating
27 member's account in the defined contribution retirement plan under this chapter in
28 accordance with the applicable requirements of any qualified domestic relations
29 order. The board shall review a domestic relations order submitted to it to
30 determine if the domestic relations order is qualified under this section and under
31 rules adopted by the board for determining the qualified status of domestic

- 1 relations orders, administering distributions, and apportioning accounts under the
2 qualified orders. Upon determination of the domestic relations order as qualified,
3 the board shall notify the participating member, the named alternate payee, and
4 the vendor, if applicable, of its receipt of the qualified domestic relations order.
- 5 2. A "qualified domestic relations order" for purposes of this section means any
6 judgment, decree, or order, including approval of a property settlement agreement,
7 which relates to the provision of child support, spousal support, or marital property
8 rights to a spouse, former spouse, child, or other dependent of a participating
9 member, is made pursuant to a North Dakota domestic relations law, which creates
10 or recognizes the existence of an alternate payee's right to, or assigns to an
11 alternate payee the right to, receive all or a part of a participating member's
12 account in the defined contribution retirement plan under this chapter. A qualified
13 domestic relations order may not require the board to provide any type or form of
14 benefit, or any option, not otherwise allowed under this chapter. However, a
15 qualified domestic relations order may require distribution from an account in the
16 defined contribution retirement plan under this chapter notwithstanding that the
17 participating member has not terminated eligible employment. A qualified domestic
18 relations order must specify:
- 19 a. The name and last-known mailing address of the participating member and
20 the name and the mailing address of each alternate payee covered by the
21 order;
- 22 b. The amount or percentage of the participating member's account to be paid to
23 each alternate payee;
- 24 c. The number of payments or period to which the order applies; and
25 d. Each retirement plan to which the order applies.

26 **15-39.3-13. Distributions.**

- 27 1. A participating member is eligible to receive distribution of that member's
28 accumulated balance in the plan upon becoming a former participating member.
- 29 2. Upon the death of a participating member or former participating member, the
30 accumulated balance of that deceased participant is considered to belong to the
31 refund beneficiary, if any, of that deceased participant. If a valid nomination of

- 1 refund beneficiary is not on file with the board, the board, in a lump sum
2 distribution, shall distribute the accumulated balance to a legal representative, if
3 any, of the deceased participant or, if there is no legal representative, to the
4 deceased participant's estate.
- 5 3. A former participating member may elect one or a combination of several of the
6 following methods of distribution of the accumulated balance:
- 7 a. A lump sum distribution to the recipient.
8 b. A lump sum direct rollover to another qualified plan, to the extent allowed by
9 federal law.
- 10 c. Periodic distributions, as authorized by the board.
11 d. No current distribution, in which case the accumulated balance must remain in
12 the plan until the former participating member or refund beneficiary elects a
13 method or methods of distribution under this section, to the extent allowed by
14 federal law.

15 A surviving spouse beneficiary may elect one or a combination of several of the
16 methods of distribution provided in subdivision a, b, or c. A beneficiary who is not
17 the surviving spouse may only choose a lump sum distribution of the accumulated
18 balance.

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

25 **15-39.3-14. Disability benefits.** The board shall allow distribution of the participating
26 member's vested account balance if the board determines that the participating member has
27 become totally and permanently disabled. If approved, the disabled member has the same
28 distribution options as provided in subdivisions a and c of subsection 3 of section 15-39.3-13.
29 However, if the member chooses the periodic distribution option, the member may receive
30 distributions only for as long as the disability continues and the member submits the necessary
31 documentation and undergoes medical testing required by the board, or for as long as the

1 member participates in a rehabilitation program required by the board, or both. If the board
2 determines that a member no longer meets the eligibility definition, the board shall discontinue
3 the disability retirement benefit.

4 **15-39.3-15. Board to provide information.** The board shall provide information to
5 participating members under this chapter. The information must include at a minimum the
6 employee's current account balance, administrative and investment costs, and coordination of
7 benefits information. Notwithstanding any other provision of law, the board is not liable for any
8 investment decision made by an employee based upon information provided to an employee
9 under this chapter.

10 **15-39.3-16. State income tax deductions.** For the purposes of state income tax, the
11 assessment imposed by this chapter on the employee must be treated in accordance with
12 existing state statutes on state income tax.

13 **15-39.3-17. Exemption from state premium tax.** Premiums, consideration for
14 annuities, and membership fees are exempt from premium taxes payable pursuant to section
15 26.1-03-17.

16 **15-39.3-18. Savings clause.** If the board determines that any section of this chapter
17 does not comply with applicable federal statutes or rules, the board shall adopt appropriate
18 terminology with respect to that section as will comply with those federal statutes or rules. Any
19 plan modifications made by the board pursuant to this section are effective until the effective
20 date of any measure enacted by the legislative assembly providing the necessary amendments
21 to this chapter to ensure compliance with the federal statutes or rules.

22 **15-39.3-19. Overpayments.** The board has the right of setoff to recover overpayments
23 made under this chapter and to satisfy any claims arising from embezzlement or fraud
24 committed by a participating member, refund beneficiary, or other person who has a claim to a
25 distribution or any other benefit from a plan governed by this chapter.

26 **15-39.3-20. Correction of records.** The board shall correct errors in the records and
27 actions in plans under this chapter and shall seek to recover overpayments and shall seek to
28 collect underpayments.

29 **SECTION 5. AMENDMENT.** Section 39-03.1-02 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **39-03.1-02. North Dakota highway patrolmen's retirement system.** A retirement
2 system is hereby established for the members of the North Dakota highway patrol.
3 Notwithstanding any other provision of law, after July 31, 2011, the North Dakota highway
4 patrolmen's retirement system is closed to new members.

5 **SECTION 6. AMENDMENT.** Section 39-03.1-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **39-03.1-07. Membership.** Except as otherwise provided, each member of the patrol,
8 including the superintendent and assistant superintendent, first employed before August 1,
9 2011, shall contribute to the fund, and is eligible to nominate and vote for members of the
10 board. Personnel of the truck regulatory division of the state highway department transferred to
11 the highway patrol after July 1, 1983, are not required to contribute to the fund. They are
12 members of the public employees retirement system and social security system.

13 **SECTION 7. AMENDMENT.** Subsection 4 of section 54-52-01 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 4. "Eligible employee" means all permanent employees who, except for employees of
16 a political subdivision or employees of the board of higher education and state
17 institutions under the jurisdiction of the board, are first employed before August 1,
18 2011, and who meet all of the eligibility requirements set by this chapter and who
19 are eighteen years or more of age, and includes appointive and elective officials
20 under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching
21 employees of the superintendent of public instruction, including the superintendent
22 of public instruction, who elect to transfer from the teachers' fund for retirement to
23 the public employees retirement system under section 54-52-02.13, and
24 employees of the state board for career and technical education who elect to
25 transfer from the teachers' fund for retirement to the public employees retirement
26 system under section 54-52-02.14. Eligible employee does not include
27 nonclassified state employees who elect to become members of the retirement
28 plan established under chapter 54-52.6 but does include employees of the judicial
29 branch first employed before August 1, 2011, employees of a political subdivision,
30 and employees of the board of higher education and state institutions under the
31 jurisdiction of the board.

1 **SECTION 8. AMENDMENT.** Section 54-52-02.3 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-52-02.3. Newly elected supreme and district court judges.** After July 1, 1973,
4 ~~any person~~ and before August 1, 2011, an individual elected or appointed to the office of judge
5 of the supreme court or judge of the district court for the first time must, from and after the date
6 that ~~person~~ individual qualifies and takes office, be a participating member of the public
7 employees retirement system under this chapter. ~~Any person~~ An individual so elected or
8 appointed is not eligible for membership in or for receipt of benefits from the retirement program
9 provided by chapter 27-17. After August 1, 2011, an individual elected or appointed to the
10 office of judge of the supreme court or judge of the district court for the first time must, from and
11 after the date that individual qualifies and takes office, be a participating member of the
12 retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the
13 first time" means ~~a person~~ an individual elected or appointed, who, after July 1, 1973, does not
14 hold office as a judge of the supreme court or the district court at the time of the ~~person's~~
15 individual's election or appointment.

16 **SECTION 9. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **54-52-02.5. Newly elected and appointed state officials.** After December 31, 1999,
19 ~~a person~~ and before August 1, 2011, an individual elected or appointed to a state office for the
20 first time must, from and after the date that ~~person~~ individual qualifies and takes office, be a
21 participating member of the public employees retirement system unless that ~~person~~ individual
22 makes an election at any time during the first six months after the date the ~~person~~ individual
23 takes office to participate in the retirement plan established under chapter 54-52.6. After
24 July 31, 2011, an individual elected or appointed to a state office for the first time must, from
25 and after the date that individual qualifies and takes office, be a participating member of the
26 retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the
27 first time" means ~~a person~~ an individual appointed, who, after December 31, 1999, does not
28 hold office as an appointed official at the time of that ~~person's~~ individual's appointment.

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

1 **54-52-02.9. Participation by temporary employees.** A Before August 1, 2011, a
2 temporary employee may elect, within one hundred eighty days of beginning employment, to
3 participate in the public employees retirement system under this chapter and receive credit for
4 service after enrollment. After July 31, 2011, a temporary employee may elect, within one
5 hundred eighty days of beginning employment, to participate in the retirement plan established
6 under chapter 54-52.6. The temporary employee shall pay monthly to the fund an amount
7 equal to eight and twelve-hundredths percent times the temporary employee's present monthly
8 salary. The temporary employee shall also pay the required monthly contribution to the retiree
9 health benefit fund established under section 54-52.1-03.2. This contribution must be recorded
10 as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the
11 temporary employee's contributions. A temporary employee may continue to participate as a
12 temporary employee in the public employees retirement system until termination of employment
13 or reclassification of the temporary employee as a permanent employee. A temporary
14 employee may not purchase any additional credit, including additional credit under section
15 54-52-17.4 or past service under section 54-52-02.6.

16 **SECTION 11. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise
19 requires:

- 20 1. "Board" means the public employees retirement system board.
- 21 2. "Deferred member" means a person who elected to receive deferred vested
22 retirement benefits under chapter 54-52.
- 23 3. "Eligible employee" means a permanent state employee, except an employee of
24 the ~~judicial branch or an employee of the~~ board of higher education and state
25 institutions under the jurisdiction of the board, who is eighteen years or more of
26 age and ~~who is in a position not classified by North Dakota human resource~~
27 ~~management services~~ temporary employees who elect to participate after July 31,
28 2011, in the retirement plan established under this chapter. If a participating
29 member loses permanent employee status and becomes a temporary employee,
30 the member may still participate in the defined contribution retirement plan.

- 1 4. "Employee" means any person employed by the state, whose compensation is
2 paid out of state funds, or funds controlled or administered by the state or paid by
3 the federal government through any of its executive or administrative officials.
- 4 5. "Employer" means the state of North Dakota.
- 5 6. "Participating member" means an eligible employee who ~~elects to participate~~
6 participates in the defined contribution retirement plan established under this
7 chapter.
- 8 7. "Permanent employee" means a state employee whose services are not limited in
9 duration and who is filling an approved and regularly funded position and is
10 employed twenty hours or more per week and at least five months each year.
- 11 8. "Wages" and "salaries" means earnings in eligible employment under this chapter
12 reported as salary on a federal income tax withholding statement plus any salary
13 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h),
14 or 457. "Salary" does not include fringe benefits such as payments for unused sick
15 leave, personal leave, vacation leave paid in a lump sum, overtime, housing
16 allowances, transportation expenses, early retirement, incentive pay, severance
17 pay, medical insurance, workforce safety and insurance benefits, disability
18 insurance premiums or benefits, or salary received by a member in lieu of
19 previously employer-provided fringe benefits under an agreement between an
20 employee and a participating employer. Bonuses may be considered as salary
21 under this section if reported and annualized pursuant to rules adopted by the
22 board.

23 **SECTION 12. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **54-52.6-02. Election.**

- 26 1. The board shall provide an opportunity for each eligible employee who is a
27 member of the public employees retirement system on September 30, 2001, and
28 who has not made a written election under this section to transfer to the defined
29 contribution retirement plan before October 1, 2001, to elect in writing to terminate
30 membership in the public employees retirement system and elect to become a
31 participating member under this chapter. Except as provided in section

1 54-52.6-03, an election made by an eligible employee under this section is
2 irrevocable. The board shall accept written elections under this section from
3 eligible employees during the period beginning on July 1, 1999, and ending
4 12:01 a.m. December 14, 2001. An eligible employee who does not make a
5 written election or who does not file the election during the period specified in this
6 section continues to be a member of the public employees retirement system. An
7 eligible employee who makes and files a written election under this section ceases
8 to be a member of the public employees retirement system effective twelve
9 midnight December 31, 2001; becomes a participating member in the defined
10 contribution retirement plan under this chapter effective 12:01 a.m. January 1,
11 2002; and waives all of that person's rights to a pension, annuity, retirement
12 allowance, insurance benefit, or any other benefit under the public employees
13 retirement system effective December 31, 2001. This section does not affect a
14 person's right to health benefits or retiree health benefits under chapter 54-52.1.
15 An eligible employee who is first employed and entered upon the payroll of that
16 person's employer after September 30, 2001, and before August 1, 2011, may
17 make an election to participate in the defined contribution retirement plan
18 established under this chapter at any time during the first six months after the date
19 of employment. If the board, in its sole discretion, determines that the employee
20 was not adequately notified of the employee's option to participate in the defined
21 contribution retirement plan, the board may provide the employee a reasonable
22 time within which to make that election, which may extend beyond the original
23 six-month decision window.

24 2. If an individual who is a deferred member of the public employees retirement
25 system on September 30, 2001, is reemployed and by virtue of that employment is
26 again eligible for membership in the public employees retirement system under
27 chapter 54-52, the individual may elect in writing to remain a member of the public
28 employees retirement system or if eligible to participate in the defined contribution
29 retirement plan established under this chapter to terminate membership in the
30 public employees retirement system and become a participating member in the
31 defined contribution retirement plan established under this chapter. An election

1 made by a deferred member under this section is irrevocable. The board shall
2 accept written elections under this section from a deferred member during the
3 period beginning on the date of the individual's reemployment and ending upon the
4 expiration of six months after the date of that reemployment. If the board, in its
5 sole discretion, determines that the employee was not adequately notified of the
6 employee's option to participate in the defined contribution retirement plan, the
7 board may provide the employee a reasonable time within which to make that
8 election, which may extend beyond the original six-month decision window. A
9 deferred member who makes and files a written election to remain a member of the
10 public employees retirement system retains all rights and is subject to all conditions
11 as a member of that retirement system. A deferred member who does not make a
12 written election or who does not file the election during the period specified in this
13 section continues to be a member of the public employees retirement system. A
14 deferred member who makes and files a written election to terminate membership
15 in the public employees retirement system ceases to be a member of the public
16 employees retirement system effective on the last day of the payroll period that
17 includes the date of the election; becomes a participating member in the defined
18 contribution retirement plan under this chapter effective the first day of the payroll
19 immediately following the date of the election; and waives all of that person's rights
20 to a pension, an annuity, a retirement allowance, insurance benefit, or any other
21 benefit under the public employees retirement system effective the last day of the
22 payroll that includes the date of the election. This section does not affect any right
23 to health benefits or retiree health benefits to which the deferred member may
24 otherwise be entitled.

25 3. An eligible employee who elects to participate in the retirement plan established
26 under this chapter must remain a participant even if that employee returns to the
27 classified service or becomes employed by a political subdivision that participates
28 in the public employees retirement system. The contribution amount must be as
29 provided in this chapter, regardless of the position in which the employee is
30 employed. Notwithstanding the irrevocability provisions of this chapter, if a
31 member who elects to participate in the retirement plan established under this

1 chapter becomes a ~~supreme or district court judge, becomes a member of the~~
2 ~~highway patrol, becomes~~ employed in a position subject to teachers' fund for
3 retirement membership, or becomes an employee of the board of higher education
4 or state institution under the jurisdiction of the board who is eligible to participate in
5 an alternative retirement program established under subsection 6 of section
6 15-10-17, the member's status as a member of the defined contribution retirement
7 plan is suspended, and the member becomes a new member of the retirement
8 plan for which that member's new position is eligible. The member's account
9 balance remains in the defined contribution retirement plan, but no new
10 contributions may be made to that account. The member's service credit and
11 salary history that were forfeited as a result of the member's transfer to the defined
12 contribution retirement plan remain forfeited, and service credit accumulation in the
13 new retirement plan begins from the first day of employment in the new position. If
14 the member later returns to employment that is eligible for the defined contribution
15 plan, the member's suspension must be terminated, the member again becomes a
16 member of the defined contribution retirement plan, and the member's account
17 resumes accepting contributions. At the member's option, and pursuant to rules
18 adopted by the board, the member may transfer any available balance as
19 determined by the provisions of the alternate retirement plan into the member's
20 account under this chapter.

21 4. After consultation with its actuary, the board shall determine the method by which a
22 participating member or deferred member may make a written election under this
23 section. If the participating member or deferred member is married at the time of
24 the election, the election is not effective unless the election is signed by the
25 individual's spouse. However, the board may waive this requirement if the
26 spouse's signature cannot be obtained because of extenuating circumstances.

27 5. If the board receives notification from the internal revenue service that this section
28 or any portion of this section will cause the public employees retirement system or
29 the retirement plan established under this chapter to be disqualified for tax
30 purposes under the Internal Revenue Code, then the portion that will cause the
31 disqualification does not apply.

- 1 6. A participating member who becomes a temporary employee may still participate in
2 the defined contribution retirement plan upon filing an election with the board within
3 one hundred eighty days of transferring to temporary employee status. The
4 participating member may not become a member of the defined benefit plan as a
5 temporary employee. The temporary employee electing to participate in the
6 defined contribution retirement plan shall pay monthly to the fund an amount equal
7 to eight and twelve-hundredths percent times the temporary employee's present
8 monthly salary. The temporary employee shall also pay the required monthly
9 contribution to the retiree health benefit fund established under section
10 54-52.1-03.2. This contribution must be recorded as a member contribution
11 pursuant to section 54-52.1-03.2. An employer may not pay the temporary
12 employee's contributions. A temporary employee may continue to participate as a
13 temporary employee until termination of employment or reclassification of the
14 temporary employee as a permanent employee.
- 15 7. A former participating member who has accepted a retirement distribution pursuant
16 to section 54-52.6-13 and who subsequently becomes employed by an entity
17 different from the employer with which the member was employed at the time the
18 member retired but which does participate in any state-sponsored retirement plan
19 may, before reenrolling in the defined contribution retirement plan, elect to
20 permanently waive future participation in the defined contribution retirement plan,
21 whatever plan in which the new employing entity participates, and the retiree health
22 program and maintain that member's retirement status. Neither the member nor
23 the employer are required to make any future retirement contributions on behalf of
24 that employee.

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

27 **54-52.6-09. Contributions - Penalty.**

- 28 1. ~~Each~~ Except as otherwise provided in this section, each participating member shall
29 contribute monthly four percent of the monthly salary or wage paid to the
30 participant, and this assessment must be deducted from the participant's salary in

- 1 equal monthly installments commencing with the first month of participation in the
2 defined contribution retirement plan established under this chapter.
- 3 2. The Except as otherwise provided in this section, the employer shall contribute an
4 amount equal to four and twelve-hundredths percent of the monthly salary or wage
5 of a participating member. If the employee's contribution is paid by the employer
6 under subsection 3 Z, the employer shall contribute, in addition, an amount equal
7 to the required employee's contribution. The employer shall pay monthly such
8 contribution into the participating member's account from its funds appropriated for
9 payroll and salary or any other funds available for such purposes. If the employer
10 fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars
11 and, as interest, one percent of the amount due for each month of delay or fraction
12 thereof after the payment became due.
- 13 3. Each judge of the supreme or district court shall contribute monthly five percent of
14 the monthly salary or wage paid to the participant, and this assessment must be
15 deducted from the participant's salary in equal monthly installments. The state
16 shall contribute an amount equal to fourteen and fifty-two hundredths percent of
17 the monthly salary or wage of a participating judge of the supreme or district court.
18 If the employee's contribution is paid by the employer under subsection 7, the
19 employer shall contribute, in addition, an amount equal to the required employee's
20 contribution. The employer shall pay monthly such contributions into the
21 participating member's account from its funds appropriated for payroll and salary or
22 any other funds available for such purposes. If the employer fails to pay the
23 contributions monthly, the employer is subject to a civil penalty of fifty dollars and,
24 as interest, one percent of the amount due for each month of delay or fraction
25 thereof after the payment became due.
- 26 4. Each member of the North Dakota highway patrol shall contribute monthly ten and
27 thirty hundredths percent of the member's monthly salary, which sum must be
28 deducted from the member's salary in equal monthly installments. The state shall
29 contribute an amount equal to sixteen and seventy hundredths percent of the
30 monthly salary or wage of a participating member of the North Dakota highway
31 patrol. If the employee's contribution is paid by the employer under subsection 7,

1 the employer shall contribute, in addition, an amount equal to the required
2 employee's contribution. The employer shall pay monthly such contributions into
3 the participating member's account from its funds appropriated for payroll and
4 salary or any other funds available for such purposes. If the employer fails to pay
5 the contributions monthly, the employer is subject to a civil penalty of fifty dollars
6 and, as interest, one percent of the amount due for each month of delay or fraction
7 thereof after the payment became due.

8 5. The employer of a national guard security officer or firefighter shall contribute an
9 amount determined by the board under section 54-52-06.2. The employer's
10 contribution must be paid from funds appropriated for salary or from any other
11 funds available for such purposes. If the security officer's or firefighter's
12 assessment is paid by the employer under subsection 7, the employer shall
13 contribute, in addition, an amount equal to the required national guard security
14 officer's or firefighter's assessment.

15 6. The employer of a peace officer employed by the bureau of criminal investigation
16 shall contribute an amount determined by the board under section 54-52-06.4. The
17 employer's contribution must be paid from funds appropriated for salary or from
18 any other funds available for such purposes. If the peace officer's assessment is
19 paid by the employer under subsection 7, the employer shall contribute, in addition,
20 an amount equal to the required peace officer's assessment.

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

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