

**HOUSE BILL NO.**

Introduced by

Representative Wald

1 A BILL for an Act to amend and reenact sections 39-03.1-02 and 39-03.1-07, subsection 4 of  
2 section 54-52-01, and sections 54-52-02.3, 54-52-02.5, 54-52-02.9, 54-52.6-01, 54-52.6-02,  
3 and 54-52.6-09 of the North Dakota Century Code, relating to a defined contribution retirement  
4 plan for state employees; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 39-03.1-02 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **39-03.1-02. North Dakota highway patrolmen's retirement system.** A retirement  
9 system is hereby established for the members of the North Dakota highway patrol.  
10 Notwithstanding any other provision of law, after July 31, 2011, the North Dakota highway  
11 patrolmen's retirement system is closed to new members.

12 **SECTION 2. AMENDMENT.** Section 39-03.1-07 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **39-03.1-07. Membership.** Except as otherwise provided, each member of the patrol,  
15 including the superintendent and assistant superintendent, first employed before August 1,  
16 2011, shall contribute to the fund, and is eligible to nominate and vote for members of the  
17 board. Personnel of the truck regulatory division of the state highway department transferred to  
18 the highway patrol after July 1, 1983, are not required to contribute to the fund. They are  
19 members of the public employees retirement system and social security system.

20 **SECTION 3. AMENDMENT.** Subsection 4 of section 54-52-01 of the North Dakota  
21 Century Code is amended and reenacted as follows:

22 4. "Eligible employee" means all permanent employees who are first employed before  
23 August 1, 2011, and who meet all of the eligibility requirements set by this chapter  
24 and who are eighteen years or more of age, and includes appointive and elective

1 officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and  
2 nonteaching employees of the superintendent of public instruction, including the  
3 superintendent of public instruction, who elect to transfer from the teachers' fund  
4 for retirement to the public employees retirement system under section  
5 54-52-02.13, and employees of the state board for career and technical education  
6 who elect to transfer from the teachers' fund for retirement to the public employees  
7 retirement system under section 54-52-02.14. Eligible employee does not include  
8 ~~nonclassified state employees who elect to become members of the retirement~~  
9 ~~plan established under chapter 54-52.6~~ are first employed after July 31, 2011, but  
10 does include employees of the judicial branch first employed before August 1,  
11 2011, employees of a political subdivision, and employees of the board of higher  
12 education and state institutions under the jurisdiction of the board first employed  
13 before August 1, 2011, and who are not participating in the teachers' insurance  
14 and annuity association of America - college retirement equities fund retirement  
15 plan.

16 **SECTION 4. AMENDMENT.** Section 54-52-02.3 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **54-52-02.3. Newly elected supreme and district court judges.** After July 1, 1973,  
19 ~~any person~~ and before August 1, 2011, an individual elected or appointed to the office of judge  
20 of the supreme court or judge of the district court for the first time must, from and after the date  
21 that ~~person~~ individual qualifies and takes office, be a participating member of the public  
22 employees retirement system under this chapter. ~~Any person~~ An individual so elected or  
23 appointed is not eligible for membership in or for receipt of benefits from the retirement program  
24 provided by chapter 27-17. After July 31, 2011, an individual elected or appointed to the office  
25 of judge of the supreme court or judge of the district court for the first time must, from and after  
26 the date that individual qualifies and takes office, be a participating member of the retirement  
27 plan established under chapter 54-52.6. As used in this section, the phrase "for the first time"  
28 means ~~a person~~ an individual elected or appointed, who, after July 1, 1973, does not hold office  
29 as a judge of the supreme court or the district court at the time of the ~~person's~~ individual's  
30 election or appointment.

1           **SECTION 5. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **54-52-02.5. Newly elected and appointed state officials.** After December 31, 1999,  
4 ~~a person~~ and before August 1, 2011, an individual elected or appointed to a state office for the  
5 first time must, from and after the date that ~~person~~ individual qualifies and takes office, be a  
6 participating member of the public employees retirement system unless that ~~person~~ individual  
7 makes an election at any time during the first six months after the date the ~~person~~ individual  
8 takes office to participate in the retirement plan established under chapter 54-52.6. After  
9 July 31, 2011, an individual elected or appointed to a state office for the first time must, from  
10 and after the date that individual qualifies and takes office, be a participating member of the  
11 retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the  
12 first time" means ~~a person~~ an individual appointed, who, after December 31, 1999, does not  
13 hold office as an appointed official at the time of that ~~person's~~ individual's appointment.

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

16           **54-52-02.9. Participation by temporary employees.** ~~A~~ Before August 1, 2011, a  
17 temporary employee may elect, within one hundred eighty days of beginning employment, to  
18 participate in the public employees retirement system under this chapter and receive credit for  
19 service after enrollment. After July 31, 2011, a temporary employee may elect, within one  
20 hundred eighty days of beginning employment, to participate in the retirement plan established  
21 under chapter 54-52.6. The temporary employee shall pay monthly to the fund an amount  
22 equal to eight and twelve-hundredths percent times the temporary employee's present monthly  
23 salary. The temporary employee shall also pay the required monthly contribution to the retiree  
24 health benefit fund established under section 54-52.1-03.2. This contribution must be recorded  
25 as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the  
26 temporary employee's contributions. A temporary employee may continue to participate as a  
27 temporary employee in the public employees retirement system until termination of employment  
28 or reclassification of the temporary employee as a permanent employee. A temporary  
29 employee may not purchase any additional credit, including additional credit under section  
30 54-52-17.4 or past service under section 54-52-02.6.

1           **SECTION 7. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise  
4 requires:

- 5           1. "Board" means the public employees retirement system board.
- 6           2. "Deferred member" means a person who elected to receive deferred vested  
7 retirement benefits under chapter 54-52.
- 8           3. "Eligible employee" means a permanent state employee, except an employee of  
9 the ~~judicial branch or an employee of the~~ board of higher education and state  
10 institutions under the jurisdiction of the board eligible to participate in the teachers'  
11 insurance and annuity association of America - college retirement equities fund  
12 retirement plan, who is eighteen years or more of age and ~~who is in a position not~~  
13 ~~classified by North Dakota human resource management services~~ a temporary  
14 employee who elects to participate after July 31, 2011, in the retirement plan  
15 established under this chapter. If a participating member loses permanent  
16 employee status and becomes a temporary employee, the member may still  
17 participate in the defined contribution retirement plan.
- 18           4. "Employee" means any person employed by the state, whose compensation is  
19 paid out of state funds, or funds controlled or administered by the state or paid by  
20 the federal government through any of its executive or administrative officials.
- 21           5. "Employer" means the state of North Dakota.
- 22           6. "Participating member" means an eligible employee who ~~elects to participate~~  
23 participates in the defined contribution retirement plan established under this  
24 chapter.
- 25           7. "Permanent employee" means a state employee whose services are not limited in  
26 duration and who is filling an approved and regularly funded position and is  
27 employed twenty hours or more per week and at least five months each year.
- 28           8. "Wages" and "salaries" means earnings in eligible employment under this chapter  
29 reported as salary on a federal income tax withholding statement plus any salary  
30 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h),  
31 or 457. "Salary" does not include fringe benefits such as payments for unused sick

1 leave, personal leave, vacation leave paid in a lump sum, overtime, housing  
2 allowances, transportation expenses, early retirement, incentive pay, severance  
3 pay, medical insurance, workforce safety and insurance benefits, disability  
4 insurance premiums or benefits, or salary received by a member in lieu of  
5 previously employer-provided fringe benefits under an agreement between an  
6 employee and a participating employer. Bonuses may be considered as salary  
7 under this section if reported and annualized pursuant to rules adopted by the  
8 board.

9 **SECTION 8. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **54-52.6-02. Election.**

12 1. The board shall provide an opportunity for each eligible employee who is a  
13 member of the public employees retirement system on September 30, 2001, and  
14 who has not made a written election under this section to transfer to the defined  
15 contribution retirement plan before October 1, 2001, to elect in writing to terminate  
16 membership in the public employees retirement system and elect to become a  
17 participating member under this chapter. Except as provided in section  
18 54-52.6-03, an election made by an eligible employee under this section is  
19 irrevocable. The board shall accept written elections under this section from  
20 eligible employees during the period beginning on July 1, 1999, and ending  
21 12:01 a.m. December 14, 2001. An eligible employee who does not make a  
22 written election or who does not file the election during the period specified in this  
23 section continues to be a member of the public employees retirement system. An  
24 eligible employee who makes and files a written election under this section ceases  
25 to be a member of the public employees retirement system effective twelve  
26 midnight December 31, 2001; becomes a participating member in the defined  
27 contribution retirement plan under this chapter effective 12:01 a.m. January 1,  
28 2002; and waives all of that person's rights to a pension, annuity, retirement  
29 allowance, insurance benefit, or any other benefit under the public employees  
30 retirement system effective December 31, 2001. This section does not affect a  
31 person's right to health benefits or retiree health benefits under chapter 54-52.1.

1           An eligible employee who is first employed and entered upon the payroll of that  
2           person's employer after September 30, 2001, and before August 1, 2011, may  
3           make an election to participate in the defined contribution retirement plan  
4           established under this chapter at any time during the first six months after the date  
5           of employment. If the board, in its sole discretion, determines that the employee  
6           was not adequately notified of the employee's option to participate in the defined  
7           contribution retirement plan, the board may provide the employee a reasonable  
8           time within which to make that election, which may extend beyond the original  
9           six-month decision window.

10          2. If an individual who is a deferred member of the public employees retirement  
11          system on September 30, 2001, is reemployed and by virtue of that employment is  
12          again eligible for membership in the public employees retirement system under  
13          chapter 54-52, the individual may elect in writing to remain a member of the public  
14          employees retirement system or if eligible to participate in the defined contribution  
15          retirement plan established under this chapter to terminate membership in the  
16          public employees retirement system and become a participating member in the  
17          defined contribution retirement plan established under this chapter. An election  
18          made by a deferred member under this section is irrevocable. The board shall  
19          accept written elections under this section from a deferred member during the  
20          period beginning on the date of the individual's reemployment and ending upon the  
21          expiration of six months after the date of that reemployment. If the board, in its  
22          sole discretion, determines that the employee was not adequately notified of the  
23          employee's option to participate in the defined contribution retirement plan, the  
24          board may provide the employee a reasonable time within which to make that  
25          election, which may extend beyond the original six-month decision window. A  
26          deferred member who makes and files a written election to remain a member of the  
27          public employees retirement system retains all rights and is subject to all conditions  
28          as a member of that retirement system. A deferred member who does not make a  
29          written election or who does not file the election during the period specified in this  
30          section continues to be a member of the public employees retirement system. A  
31          deferred member who makes and files a written election to terminate membership

1           in the public employees retirement system ceases to be a member of the public  
2           employees retirement system effective on the last day of the payroll period that  
3           includes the date of the election; becomes a participating member in the defined  
4           contribution retirement plan under this chapter effective the first day of the payroll  
5           immediately following the date of the election; and waives all of that person's rights  
6           to a pension, an annuity, a retirement allowance, insurance benefit, or any other  
7           benefit under the public employees retirement system effective the last day of the  
8           payroll that includes the date of the election. This section does not affect any right  
9           to health benefits or retiree health benefits to which the deferred member may  
10          otherwise be entitled.

11          3. An eligible employee who elects to participate in the retirement plan established  
12          under this chapter must remain a participant even if that employee returns to the  
13          classified service or becomes employed by a political subdivision that participates  
14          in the public employees retirement system. The contribution amount must be as  
15          provided in this chapter, regardless of the position in which the employee is  
16          employed. Notwithstanding the irrevocability provisions of this chapter, if a  
17          member who elects to participate in the retirement plan established under this  
18          chapter becomes a ~~supreme or district court judge, becomes a member of the~~  
19          highway patrol, becomes employed in a position subject to teachers' fund for  
20          retirement membership, or becomes an employee of the board of higher education  
21          or state institution under the jurisdiction of the board who is eligible to participate in  
22          an alternative retirement program established under subsection 6 of section  
23          15-10-17, the member's status as a member of the defined contribution retirement  
24          plan is suspended, and the member becomes a new member of the retirement  
25          plan for which that member's new position is eligible. The member's account  
26          balance remains in the defined contribution retirement plan, but no new  
27          contributions may be made to that account. The member's service credit and  
28          salary history that were forfeited as a result of the member's transfer to the defined  
29          contribution retirement plan remain forfeited, and service credit accumulation in the  
30          new retirement plan begins from the first day of employment in the new position. If  
31          the member later returns to employment that is eligible for the defined contribution

1 plan, the member's suspension must be terminated, the member again becomes a  
2 member of the defined contribution retirement plan, and the member's account  
3 resumes accepting contributions. At the member's option, and pursuant to rules  
4 adopted by the board, the member may transfer any available balance as  
5 determined by the provisions of the alternate retirement plan into the member's  
6 account under this chapter.

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

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

18 6. A participating member who becomes a temporary employee may still participate in  
19 the defined contribution retirement plan upon filing an election with the board within  
20 one hundred eighty days of transferring to temporary employee status. The  
21 participating member may not become a member of the defined benefit plan as a  
22 temporary employee. The temporary employee electing to participate in the  
23 defined contribution retirement plan shall pay monthly to the fund an amount equal  
24 to eight and twelve-hundredths percent times the temporary employee's present  
25 monthly salary. The temporary employee shall also pay the required monthly  
26 contribution to the retiree health benefit fund established under section  
27 54-52.1-03.2. This contribution must be recorded as a member contribution  
28 pursuant to section 54-52.1-03.2. An employer may not pay the temporary  
29 employee's contributions. A temporary employee may continue to participate as a  
30 temporary employee until termination of employment or reclassification of the  
31 temporary employee as a permanent employee.

1           7. A former participating member who has accepted a retirement distribution pursuant  
2           to section 54-52.6-13 and who subsequently becomes employed by an entity  
3           different from the employer with which the member was employed at the time the  
4           member retired but which does participate in any state-sponsored retirement plan  
5           may, before reenrolling in the defined contribution retirement plan, elect to  
6           permanently waive future participation in the defined contribution retirement plan,  
7           whatever plan in which the new employing entity participates, and the retiree health  
8           program and maintain that member's retirement status. Neither the member nor  
9           the employer are required to make any future retirement contributions on behalf of  
10          that employee.

11          **SECTION 9. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is  
12          amended and reenacted as follows:

13          **54-52.6-09. Contributions - Penalty.**

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

- 1           shall contribute an amount equal to fourteen and fifty-two hundredths percent of  
2           the monthly salary or wage of a participating judge of the supreme or district court.  
3           If the employee's contribution is paid by the employer under subsection 7, the  
4           employer shall contribute, in addition, an amount equal to the required employee's  
5           contribution. The employer shall pay monthly such contributions into the  
6           participating member's account from its funds appropriated for payroll and salary or  
7           any other funds available for such purposes. If the employer fails to pay the  
8           contributions monthly, the employer is subject to a civil penalty of fifty dollars and,  
9           as interest, one percent of the amount due for each month of delay or fraction  
10           thereof after the payment became due.
- 11        4. Each member of the North Dakota highway patrol shall contribute monthly ten and  
12        thirty hundredths percent of the member's monthly salary, which sum must be  
13        deducted from the member's salary in equal monthly installments. The state shall  
14        contribute an amount equal to sixteen and seventy hundredths percent of the  
15        monthly salary or wage of a participating member of the North Dakota highway  
16        patrol. If the employee's contribution is paid by the employer under subsection 7,  
17        the employer shall contribute, in addition, an amount equal to the required  
18        employee's contribution. The employer shall pay monthly such contributions into  
19        the participating member's account from its funds appropriated for payroll and  
20        salary or any other funds available for such purposes. If the employer fails to pay  
21        the contributions monthly, the employer is subject to a civil penalty of fifty dollars  
22        and, as interest, one percent of the amount due for each month of delay or fraction  
23        thereof after the payment became due.
- 24        5. The employer of a national guard security officer or firefighter shall contribute an  
25        amount determined by the board under section 54-52-06.2. The employer's  
26        contribution must be paid from funds appropriated for salary or from any other  
27        funds available for such purposes. If the security officer's or firefighter's  
28        assessment is paid by the employer under subsection 7, the employer shall  
29        contribute, in addition, an amount equal to the required national guard security  
30        officer's or firefighter's assessment.

- 1           6. The employer of a peace officer employed by the bureau of criminal investigation  
2           shall contribute an amount determined by the board under section 54-52-06.4. The  
3           employer's contribution must be paid from funds appropriated for salary or from  
4           any other funds available for such purposes. If the peace officer's assessment is  
5           paid by the employer under subsection 7, the employer shall contribute, in addition,  
6           an amount equal to the required peace officer's assessment.
- 7           7. Each employer, at its option, may pay the employee contributions required by this  
8           section for all compensation earned after December 31, 1999. The amount paid  
9           must be paid by the employer in lieu of contributions by the employee. If the  
10          employer decides not to pay the contributions, the amount that would have been  
11          paid will continue to be deducted from the employee's compensation. If  
12          contributions are paid by the employer, they must be treated as employer  
13          contributions in determining tax treatment under this code and the federal Internal  
14          Revenue Code. Contributions paid by the employer may not be included as gross  
15          income of the employee in determining tax treatment under this code and the  
16          federal Internal Revenue Code until they are distributed or made available. The  
17          employer shall pay these employee contributions from the same source of funds  
18          used in paying compensation to the employee. The employer shall pay these  
19          contributions by effecting an equal cash reduction in the gross salary of the  
20          employee or by an offset against future salary increases or by a combination of a  
21          reduction in gross salary and offset against future salary increases. Employee  
22          contributions paid by the employer must be treated for the purposes of this chapter  
23          in the same manner and to the same extent as employee contributions made  
24          before the date on which employee contributions were assumed by the employer.  
25          An employer shall exercise its option under this subsection by December 1, 1999,  
26          and shall report its choice to the board in writing. The option chosen may not be  
27          revoked for the remainder of the biennium. Thereafter, the option choice must be  
28          forwarded to the board, in writing, by June fifteenth of each odd-numbered year.