

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1452

Introduced by

Representatives Kasper, Belter, Carlson, Dosch, Grande, Keiser, Klein, Ruby, Streyle

Senators Grindberg, Hogue, Klein

1 A BILL for an Act to create a new section to chapter 39-03.1 and a new section to chapter 54-52
 2 of the North Dakota Century Code, relating to expiration of the increase in highway patrolmen's
 3 retirement plan and public employees retirement system member and employer contributions;
 4 to amend and reenact sections 39-03.1-09 and 39-03.1-10, subsection 4 of section 54-52-01
 5 ~~and~~, sections 54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-06.3, and
 6 54-52.6-01, subsection 6 of section 54-52.6-02, and sections 54-52.6-02; and ~~54-52.6-15~~54-
 7 52.6-09 of the North Dakota Century Code, relating to increased employer and employee
 8 contributions under the highway patrolmen's retirement plan and public employees retirement
 9 system and eligibility to participate in the defined contribution retirement plan; ~~and to repeal~~
 10 ~~section 54-52.6-03 of the North Dakota Century Code, relating to calculation of accumulated~~
 11 ~~fund balances under the public employees retirement system~~ to provide for a legislative
 12 management study; to provide an appropriation; to provide an effective date; and to provide an
 13 expiration date.

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

15 **SECTION 1. AMENDMENT.** Section 39-03.1-09 of the North Dakota Century Code is
 16 amended and reenacted as follows:

17 **39-03.1-09. Payments by contributors - Employer payment of employee contribution.**

18 1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund
 19 ten and thirty-hundredths percent of the member's monthly salary, which sum must be
 20 deducted from the member's salary and credited to the member's account in the fund.
 21 Member contributions increase by one percent of the member's monthly salary
 22 beginning with the monthly reporting period of January 2012, ~~and~~ with an additional
 23 increase of one percent, beginning with the monthly reporting period of January 2013.

and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.

2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.
3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in

1 accordance with this subsection must be treated for the purposes of this chapter in the
2 same manner and to the same extent as member contributions made before the date
3 the contributions were assumed by the state. The state shall pay these member
4 contributions from the same source of funds used in paying compensation to the
5 members. The state shall pay these contributions by effecting an equal cash reduction
6 in the gross salary of the employee. The state shall continue making payments under
7 this section unless otherwise specifically provided for under the agency's biennial
8 appropriation or by law.

9 **SECTION 2. AMENDMENT.** Section 39-03.1-10 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **39-03.1-10. Contributions by the state.**

12 The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths
13 percent of the monthly salary or wage of a participating member. State contributions increase by
14 one percent of the monthly salary or wage of a participating member beginning with the monthly
15 reporting period of January 2012, and with an additional increase of one percent, beginning with
16 the reporting period of January 2013, and with an additional increase of one percent, beginning
17 with the monthly reporting period of January 2014. If the member's contribution is paid by the
18 state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount
19 equal to the required member's contribution. The state shall pay the associated employer
20 contribution for those members who elect to exercise their rights under subsection 3 of section
21 39-03.1-10.1.

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

24 **Reduction in member and employer contributions.**

25 The required increase in the amount of member and employer contributions under
26 sections 1 and 2 of this Act must be reduced to the rate in effect on the effective date of this Act
27 effective on the July first that follows the first valuation of the highway patrolmen's retirement
28 plan showing a ratio of the actuarial value of assets to the actuarial accrued liability of the
29 highway patrolmen's retirement plan that is equal to or greater than one hundred percent.

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

1 4. "Eligible employee" means all permanent employees who meet all of the eligibility
2 requirements set by this chapter and who are eighteen years or more of age, and
3 includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and
4 54-52-02.12, and nonteaching employees of the superintendent of public instruction,
5 including the superintendent of public instruction, who elect to transfer from the
6 teachers' fund for retirement to the public employees retirement system under section
7 54-52-02.13, and employees of the state board for career and technical education who
8 elect to transfer from the teachers' fund for retirement to the public employees
9 retirement system under section 54-52-02.14. Eligible employee does not include
10 nonclassified state employees who elect to become members of the retirement plan
11 established under chapter 54-52.6 ~~but does include employees of the judicial branch~~
12 ~~and employees of the board of higher education and state institutions under the~~
13 ~~jurisdiction of the board.~~

14 **SECTION 5. 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.**

17 A temporary employee may elect, within one hundred eighty days of beginning employment,
18 to participate in the public employees retirement system and receive credit for service after
19 enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight
20 and twelve-hundredths percent times the temporary employee's present monthly salary. The
21 amount required to be paid by a temporary employee increases by two percent times the
22 temporary employee's present monthly salary beginning with the monthly reporting period of
23 January 2012, and with an additional two percent increase, beginning with the reporting period
24 of January 2013, and with an additional increase of two percent, beginning with the monthly
25 reporting period of January 2014. The temporary employee shall also pay the required monthly
26 contribution to the retiree health benefit fund established under section 54-52.1-03.2. This
27 contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An
28 employer may not pay the temporary employee's contributions. A temporary employee may
29 continue to participate as a temporary employee in the public employees retirement system until
30 termination of employment or reclassification of the temporary employee as a permanent

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

3 **SECTION 6. AMENDMENT.** Section 54-52-05 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-52-05. Membership and assessments - Employer payment of employee**
6 **contributions.**

- 7 1. Every eligible governmental unit employee concurring in the plan must so state in
8 writing and all future eligible employees are participating members. An employee who
9 was not enrolled in the retirement system when eligible to participate must be enrolled
10 immediately upon notice of the employee's eligibility, unless the employee waives in
11 writing the employee's right to participate for the previous time of eligibility, to avoid
12 contributing to the fund for past service. An employee who is eligible for normal
13 retirement who accepts a retirement benefit under this chapter and who subsequently
14 becomes employed with a participating employer other than the employer with which
15 the employee was employed at the time the employee retired under this chapter may,
16 before reenrolling in the retirement plan, elect to permanently waive future
17 participation in the retirement plan and the retiree health program and maintain that
18 employee's retirement status. An employee making this election is not required to
19 make any future employee contributions to the public employees retirement system
20 nor is the employee's employer required to make any further contributions on behalf of
21 that employee.
- 22 2. Each member must be assessed and required to pay monthly four percent of the
23 monthly salary or wage paid to the member, and such assessment must be deducted
24 and retained out of such salary in equal monthly installments commencing with the
25 first month of employment. Member contributions increase by one percent of the
26 monthly salary or wage paid to the member beginning with the monthly reporting
27 period of January 2012, and with an additional increase of one percent, beginning with
28 the monthly reporting period of January 2013, and with an additional increase of one
29 percent, beginning with the monthly reporting period of January 2014.
- 30 3. Each employer, at its option, may pay all or a portion of the employee contributions
31 required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and

1 54-52-06.4 or the employee contributions required to purchase service credit on a
2 pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not
3 receive the contributed amounts directly once the employer has elected to pay the
4 employee contributions. The amount paid must be paid by the employer in lieu of
5 contributions by the employee. If the state determines not to pay the contributions, the
6 amount that would have been paid must continue to be deducted from the employee's
7 compensation. If contributions are paid by the employer, they must be treated as
8 employer contributions in determining tax treatment under this code and the federal
9 Internal Revenue Code. If contributions are paid by the employer, they may not be
10 included as gross income of the employee in determining tax treatment under this
11 code and the Internal Revenue Code until they are distributed or made available. The
12 employer shall pay these employee contributions from the same source of funds used
13 in paying compensation to the employee or from the levy authorized by subsection 5
14 of section 57-15-28.1. The employer shall pay these contributions by effecting an
15 equal cash reduction in the gross salary of the employee or by an offset against future
16 salary increases or by a contribution of a reduction in gross salary and offset against
17 future salary increases. If employee contributions are paid by the employer, they must
18 be treated for the purposes of this chapter in the same manner and to the same extent
19 as employee contributions made prior to the date on which employee contributions
20 were assumed by the employer. An employer exercising its option under this
21 subsection shall report its choice to the board in writing.

- 22 4. For compensation earned after August 1, 2009, all employee contributions required
23 under section 54-52-06.1 and the job service North Dakota retirement plan, and not
24 otherwise paid under subsection 3, must be paid by the employer in lieu of
25 contributions by the member. All contributions paid by the employer under this
26 subsection must be treated as employer contributions in determining tax treatment
27 under this code and the Internal Revenue Code. Contributions paid by the employer
28 under this subsection may not be included as gross income of the member in
29 determining tax treatment under this code and the Internal Revenue Code until the
30 contributions are distributed or made available. Contributions paid by the employer in
31 accordance with this subsection must be treated for the purposes of this chapter in the

1 same manner and to the same extent as member contributions made before the date
2 the contributions were assumed by the employer. The employer shall pay these
3 member contributions from the same source of funds used in paying compensation to
4 the employee. The employer shall pay these contributions by effecting an equal cash
5 reduction in the gross salary of the employee. The employer shall continue making
6 payments under this section unless otherwise specifically provided for under the
7 agency's biennial appropriation or by amendment to law.

8 **SECTION 7. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **54-52-06. Employer's contribution to retirement plan.**

11 Each governmental unit shall contribute an amount equal to four and twelve-hundredths
12 percent of the monthly salary or wage of a participating member. Governmental unit
13 contributions increase by one percent of the monthly salary or wage of a participating member
14 beginning with the monthly reporting period of January 2012, and with an additional increase of
15 one percent, beginning with the reporting period of January 2013, and with an additional
16 increase of one percent, beginning with the monthly reporting period of January 2014. For those
17 members who elect to exercise their rights under section 54-52-17.14, the employing
18 governmental unit, or in the case of a member not presently under covered employment the
19 most recent employing governmental unit, shall pay the associated employer contribution. If the
20 employee's contribution is paid by the governmental unit under subsection 3 of section
21 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required
22 employee's contribution. Each governmental unit shall pay the contribution monthly, or in the
23 case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund
24 from its funds appropriated for payroll and salary or any other funds available for these
25 purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an
26 election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty
27 dollars and, as interest, one percent of the amount due for each month of delay or fraction
28 thereof after the payment became due. In lieu of assessing a civil penalty or one percent per
29 month, or both, interest at the actuarial rate of return may be assessed for each month the
30 contributions are delinquent. If contributions are paid within ninety days of the date they became
31 due, penalty and interest to be paid on delinquent contributions may be waived. An employer is

1 required to submit contributions for any past eligible employee who was employed after July 1,
2 1977, for which contributions were not made if the employee would have been eligible to
3 become vested had the employee participated and if the employee elects to join the public
4 employees retirement system. Employer contributions may not be assessed for eligible service
5 that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall
6 report to each session of the legislative assembly the contributions necessary, as determined by
7 the actuarial study, to maintain the fund's actuarial soundness.

8 **SECTION 8. AMENDMENT.** Section 54-52-06.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **54-52-06.1. Contribution by supreme and district court judges - Employer**
11 **contribution.**

12 Each judge of the supreme or district court who is a member of the public employees
13 retirement system must be assessed and required to pay monthly five percent of the judge's
14 monthly salary. Member contributions increase by one percent of the judge's monthly salary
15 beginning with the monthly reporting period of January 2012, and with an additional increase of
16 one percent, beginning with the reporting period of January 2013, and with an additional
17 increase of one percent, beginning with the monthly reporting period of January 2014. The
18 assessment must be deducted and retained out of the judge's salary in equal monthly
19 installments. The state shall contribute an amount equal to fourteen and fifty-two
20 one-hundredths percent of the monthly salary of a supreme or district court judge who is a
21 participating member of the system, which matching contribution must be paid from its funds
22 appropriated for salary, or from any other funds available for such purposes. State contributions
23 increase by one percent of the monthly salary of a supreme or district court judge who is a
24 participating member of the system beginning with the monthly reporting period of
25 January 2012, and with an additional increase of one percent, beginning with the monthly
26 reporting period of January 2013, and with an additional increase of one percent, beginning with
27 the monthly reporting period of January 2014. If the judge's contribution is paid by the state
28 under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal
29 to the required judge's contribution.

30 **SECTION 9. AMENDMENT.** Section 54-52-06.2 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **54-52-06.2. Contribution by national guard security officers or firefighters - Employer**
2 **contribution.**

3 Each national guard security officer or firefighter who is a member of the public employees
4 retirement system is assessed and shall pay monthly four percent of the employee's monthly
5 salary. Member contributions increase by one-half of one percent of the member's monthly
6 salary beginning with the monthly reporting period of January 2014. The assessment must be
7 deducted and retained out of the employee's salary in equal monthly installments. The national
8 guard security officer's or firefighter's employer shall contribute an amount determined by the
9 board to be actuarially required to support the level of benefits specified in section 54-52-17.
10 The employer's 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 assessment is paid by
12 the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition,
13 an amount equal to the required national guard security officer's or firefighter's assessment.

14 **SECTION 10. AMENDMENT.** Section 54-52-06.3 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **54-52-06.3. Contribution by peace officers and correctional officers employed by**
17 **political subdivisions - Employer contribution.**

18 Each peace officer or correctional officer employed by a political subdivision that enters into
19 an agreement with the retirement board on behalf of its peace officers and correctional officers
20 separately from its other employees and who is a member of the public employees retirement
21 system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace
22 officer or correctional officer contributions increase by one-half of one percent of the member's
23 monthly salary beginning with the monthly reporting period of January 2012, and with an
24 additional increase of one-half of one percent, beginning with the monthly reporting period of
25 January 2013, and with an additional increase of one-half of one percent, beginning with the
26 monthly reporting period of January 2014. The assessment must be deducted and retained out
27 of the employee's salary in equal monthly installments. The peace officer's or correctional
28 officer's employer shall contribute an amount determined by the board to be actuarially required
29 to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional
30 officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the

1 employer shall contribute, in addition, an amount equal to the required peace officer's or
2 correctional officer's assessment.

3 **SECTION 11.** A new section to chapter 54-52 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Reduction in member and employer contributions.**

6 The required increase in the amount of member and employer contributions under
7 sections 5, 6, 7, 8, 9, 10, 13, and 15 of this Act must be reduced to the rate in effect on the
8 effective date of this Act effective on the July first that follows the first valuation of the public
9 employees retirement system main system showing a ratio of the actuarial value of assets to
10 the actuarial accrued liability of the public employees retirement system main system that is
11 equal to or greater than one hundred percent.

12 **SECTION 12. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **54-52.6-01. Definition of terms.**

15 As used in this chapter, unless the context otherwise requires:

- 16 1. "Board" means the public employees retirement system board.
- 17 2. "Deferred member" means a person who elected to receive deferred vested retirement
18 benefits under chapter 54-52.
- 19 3. "Eligible employee" means a permanent state employee, ~~except an employee of the~~
20 ~~judicial branch or an employee of the board of higher education and state institutions~~
21 ~~under the jurisdiction of the board, who is eighteen years or more of age and who is in~~
22 ~~a position not classified by North Dakota human resource management services. If a~~
23 ~~participating member loses permanent employee status and becomes a temporary~~
24 ~~employee, the member may still participate in the defined contribution retirement plan~~
25 who is hired after July 30, 2013 elects to participate in the retirement plan under this
26 chapter.
- 27 4. "Employee" means any person employed by the state, whose compensation is paid
28 out of state funds, or funds controlled or administered by the state or paid by the
29 federal government through any of its executive or administrative officials.
- 30 5. "Employer" means the state of North Dakota.

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

17 **SECTION 13. AMENDMENT.** Subsection 6 of section 54-52.6-02 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 6. A participating member who becomes a temporary employee may still participate in
20 the defined contribution retirement plan upon filing an election with the board within
21 one hundred eighty days of transferring to temporary employee status. The
22 participating member may not become a member of the defined benefit plan as a
23 temporary employee. The temporary employee electing to participate in the defined
24 contribution retirement plan shall pay monthly to the fund an amount equal to eight
25 and twelve-hundredths percent times the temporary employee's present monthly
26 salary. The amount required to be paid by a temporary employee increases by two
27 percent times the temporary employee's present monthly salary beginning with the
28 monthly reporting period of January 2012, and with an additional increase of two
29 percent, beginning with the monthly reporting period of January 2013, and with an
30 additional increase of two percent, beginning with the monthly reporting period of
31 January 2014. The temporary employee shall also pay the required monthly

1 contribution to the retiree health benefit fund established under section 54-52.1-03.2.
2 This contribution must be recorded as a member contribution pursuant to section
3 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A
4 temporary employee may continue to participate as a temporary employee until
5 termination of employment or reclassification of the temporary employee as a
6 permanent employee.

7 **SECTION 14. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **54-52.6-02. Election.**

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

1 after the date of employment. If the board, in its sole discretion, determines that the
2 employee was not adequately notified of the employee's option to participate in the
3 defined contribution retirement plan, the board may provide the employee a
4 reasonable time within which to make that election, which may extend beyond the
5 original six-month decision window.

- 6 2. If an individual who is a deferred member of the public employees retirement system
7 on September 30, 2001, is reemployed and by virtue of that employment is again
8 eligible for membership in the public employees retirement system under chapter
9 54-52, the individual may elect in writing to remain a member of the public employees
10 retirement system or if eligible to participate in the defined contribution retirement plan
11 established under this chapter to terminate membership in the public employees
12 retirement system and become a participating member in the defined contribution
13 retirement plan established under this chapter. An election made by a deferred
14 member under this section is irrevocable. The board shall accept written elections
15 under this section from a deferred member during the period beginning on the date of
16 the individual's reemployment and ending upon the expiration of six months after the
17 date of that reemployment. If the board, in its sole discretion, determines that the
18 employee was not adequately notified of the employee's option to participate in the
19 defined contribution retirement plan, the board may provide the employee a
20 reasonable time within which to make that election, which may extend beyond the
21 original six-month decision window. A deferred member who makes and files a written
22 election to remain a member of the public employees retirement system retains all
23 rights and is subject to all conditions as a member of that retirement system. A
24 deferred member who does not make a written election or who does not file the
25 election during the period specified in this section continues to be a member of the
26 public employees retirement system. A deferred member who makes and files a
27 written election to terminate membership in the public employees retirement system
28 ceases to be a member of the public employees retirement system effective on the
29 last day of the payroll period that includes the date of the election; becomes a
30 participating member in the defined contribution retirement plan under this chapter
31 effective the first day of the payroll immediately following the date of the election; and

1 waives all of that person's rights to a pension, an annuity, a retirement allowance,
2 insurance benefit, or any other benefit under the public employees retirement system
3 effective the last day of the payroll that includes the date of the election. This section
4 does not affect any right to health benefits or retiree health benefits to which the
5 deferred member may otherwise be entitled.

- 6 3. An eligible employee who elects to participate in the retirement plan established under
7 this chapter must remain a participant even if that employee returns to the classified
8 service or becomes employed by a political subdivision that participates in the public
9 employees retirement system. The contribution amount must be as provided in this
10 chapter, regardless of the position in which the employee is employed.

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

1 4. After consultation with its actuary, the board shall determine the method by which a
2 participating member or deferred member may make a written election under this
3 section. If the participating member or deferred member is married at the time of the
4 election, the election is not effective unless the election is signed by the individual's
5 spouse. However, the board may waive this requirement if the spouse's signature
6 cannot be obtained because of extenuating circumstances. ~~At the time of hire the~~
7 ~~board shall provide an opportunity for an eligible employee to elect to participate in the~~
8 ~~defined contribution retirement plan under this chapter in lieu of the public employees~~
9 ~~retirement system under chapter 54-52, pursuant to rules adopted by the board. A new~~
10 ~~hire may exercise this election anytime from the time of hire until the expiration of thirty~~
11 ~~days following the completion of a probationary period. If an eligible employee's terms~~
12 ~~of employment do not provide for a probationary period, that eligible employee has~~
13 ~~thirty days following the first day of employment within which to exercise this~~
14 ~~election. The board shall provide an opportunity for eligible employees who are new~~
15 ~~members of the public employees retirement system under chapter 54-52 to transfer~~
16 ~~to the defined contribution plan under this chapter pursuant to the rules and policies~~
17 ~~adopted by the board. An election made by an eligible employee to participate in a~~
18 ~~member of the public employees retirement system under chapter 54-52 to transfer to~~
19 the defined contribution retirement plan under this chapter is irrevocable. ~~In the case~~
20 ~~of an eligible employee who makes an election after the date of hire, the election will~~
21 ~~have the effect of that eligible employee transferring~~ For an individual who elects to
22 transfer membership from the public employees retirement system under chapter
23 54-52 to the defined contribution retirement plan under this chapter, ~~and~~ the board
24 shall transfer a lump sum amount from the public employees retirement system fund to
25 the participating member's account in the defined contribution retirement plan under
26 this chapter. However, if the individual terminates employment prior to receiving the
27 lump sum transfer under this section, the election made is ineffective and the
28 individual remains a member of the public employees retirement system under chapter
29 54-52 and retains all the rights and privileges under that chapter. ~~The board shall~~
30 ~~calculate the actuarial present value of the individual's accumulated benefit obligation~~
31 ~~under the public employees retirement system based on the assumption that the~~

1 ~~individual will retire under the earliest applicable normal retirement age.~~ This section
2 ~~does not affect an individual's right to health benefits or retiree health benefits under~~
3 ~~chapter 54-52.1.~~

4 ~~5.2.~~ If the board receives notification from the internal revenue service that this section or
5 any portion of this section will cause the public employees retirement system or the
6 retirement plan established under this chapter to be disqualified for tax purposes
7 under the Internal Revenue Code, then the portion that will cause the disqualification
8 does not apply.

9 ~~6.3.~~ A participating member who becomes a temporary employee may still participate in
10 the defined contribution retirement plan upon filing an election with the board within
11 one hundred eighty days of transferring to temporary employee status. The
12 participating member may not become a member of the defined benefit plan as a
13 temporary employee. The temporary employee electing to participate in the defined
14 contribution retirement plan shall pay monthly to the fund an amount equal to eight
15 and twelve-hundredths percent times the temporary employee's present monthly
16 salary. The amount required to be paid by a temporary employee increases by two
17 percent times the temporary employee's present monthly salary beginning with the
18 monthly reporting period of January 2012, and with an additional increase of two
19 percent, beginning with the reporting period of January 2013. The temporary
20 employee shall also pay the required monthly contribution to the retiree health benefit
21 fund established under section 54-52.1-03.2. This contribution must be recorded as a
22 member contribution pursuant to section 54-52.1-03.2. An employer may not pay the
23 temporary employee's contributions. A temporary employee may continue to
24 participate as a temporary employee until termination of employment or
25 reclassification of the temporary employee as a permanent employee.

26 ~~7.4.~~ A former participating member who has accepted a retirement distribution pursuant to
27 section 54-52.6-13 and who subsequently becomes employed by an entity different
28 from the employer with which the member was employed at the time the member
29 retired but which does participate in any state-sponsored retirement plan may, before
30 reenrolling in the defined contribution retirement plan, elect to permanently waive
31 future participation in the defined contribution retirement plan, whatever plan in which

1 the new employing entity participates, and the retiree health program and maintain
2 that member's retirement status. Neither the member nor the employer are required to
3 make any future retirement contributions on behalf of that employee.

4 ~~— **SECTION 14. AMENDMENT.** Section 54-52.6-15 of the North Dakota Century Code is
5 amended and reenacted as follows:~~

6 ~~— **54-52.6-15. Board to provide information.**~~

7 ~~— The board shall provide information to new hires and employees who are eligible to elect to
8 become participating members under this chapter. The information must include at a minimum
9 the employee's current account balance, the assumption of investment risk under a defined
10 contribution retirement plan, administrative and investment costs, coordination of benefits
11 information, and a comparison of projected retirement benefits under the public employees
12 retirement system under chapter 54-52 and the retirement plan established under this chapter.
13 Notwithstanding any other provision of law, the board is not liable for any election or investment
14 decision made by an employee based upon information provided to an employee under this
15 chapter.~~

16 ~~— **SECTION 15. REPEAL.** Section 54-52.6-03 of the North Dakota Century Code is repealed.~~

17 **SECTION 15. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **54-52.6-09. Contributions - Penalty.**

- 20 1. Each participating member shall contribute monthly four percent of the monthly salary
21 or wage paid to the participant, and this assessment must be deducted from the
22 participant's salary in equal monthly installments commencing with the first month of
23 participation in the defined contribution retirement plan established under this chapter.
24 Participating member contributions increase by one percent of the monthly salary or
25 wage paid to the participant beginning with the monthly reporting period of
26 January 2012, and with an additional increase of one percent, beginning with the
27 reporting period of January 2013, and with an additional increase of one percent,
28 beginning with the monthly reporting period of January 2014.
29 2. The employer shall contribute an amount equal to four and twelve-hundredths percent
30 of the monthly salary or wage of a participating member. Employer contributions
31 increase by one percent of the monthly salary or wage of a participating member

1 beginning with the monthly reporting period of January 2012, and with an additional
2 increase of one percent, beginning with the monthly reporting period of January 2013,
3 and with an additional increase of one percent, beginning with the monthly reporting
4 period of January 2014. If the employee's contribution is paid by the employer under
5 subsection 3, the employer shall contribute, in addition, an amount equal to the
6 required employee's contribution. The employer shall pay monthly such contribution
7 into the participating member's account from its funds appropriated for payroll and
8 salary or any other funds available for such purposes. If the employer fails to pay the
9 contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one
10 percent of the amount due for each month of delay or fraction thereof after the
11 payment became due.

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

1 **SECTION 16. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT**

2 **PLANS.** During the 2013-14 interim, the legislative management shall consider studying the
3 feasibility and desirability of existing and possible state retirement plans. The study must include
4 an analysis of both a defined benefit plan and a defined contribution plan with considerations
5 and possible consequences for transitioning to a state defined contribution plan. The study may
6 not be conducted by the employee benefits programs committee. The legislative management
7 shall report its findings and recommendations, together with any legislation needed to
8 implement the recommendations, to the sixty-fourth legislative assembly.

9 **SECTION 17. APPROPRIATION.** There is appropriated from special funds derived from
10 public employees retirement system income not otherwise appropriated, the sum of \$22,000, or
11 so much of the sum as may be necessary, to the public employees retirement system board for
12 the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending
13 June 30, 2015.

14 **SECTION 18. EFFECTIVE DATE.** Sections 4, 12, and 14 of this Act become effective on
15 October 1, 2013.

16 **SECTION 19. EXPIRATION DATE - SUSPENSION.** Sections 4, 12, and 14 of this Act are
17 effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is
18 suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03, as it existed on
19 September 30, 2013, becomes effective on August 1, 2017.