

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1062

Introduced by

Government and Veterans Affairs Committee

(At the request of the Public Employees Retirement System)

1 A BILL for an Act to amend and reenact subsection 6 of section 39-03.1-01, sections
2 39-03.1-10.3 and 39-03.1-11.2, subsection 3 of section 39-03.1-14.1, subsection 1 of section
3 54-52-05, subsection 3 of section 54-52-17, subsection 1 of section 54-52-17.2, sections
4 54-52-17.14 and 54-52-28, subsection 1 of section 54-52.1-03, and sections 54-52.1-03.1,
5 54-52.1-03.4, 54-52.1-18, 54-52.6-09.4, and 54-52.6-21 of the North Dakota Century Code,
6 relating to the highway patrolmen's retirement plan and the public employees retirement system
7 defined benefit plan and defined contribution plan retirement benefits, health insurance plans,
8 life insurance benefits, and employee assistance benefits coverage; and to provide for
9 retroactive application.

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

11 **SECTION 1. AMENDMENT.** Subsection 6 of section 39-03.1-01 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 6. "Salary" means the actual dollar compensation, excluding any bonus or overtime, or
14 expense allowance, paid to or for a contributor for the contributor's services.

15 **SECTION 2. AMENDMENT.** Section 39-03.1-10.3 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **39-03.1-10.3. Military service under the Uniformed Services Employment and**
18 **Reemployment Rights Act - Member retirement credit.**

19 A member reemployed under the Uniformed Services Employment and Reemployment
20 Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is
21 entitled to receive retirement credit for the period of qualified military service. The required
22 contribution for the credit, including payment for retiree health benefits, must be made in the
23 same manner and by the same party as would have been made had the employee been
24 continuously employed. If the salary the member would have received during the period of

1 service is not reasonably certain, the member's average rate of compensation during the
2 twelve-month period immediately preceding the member's period of service or, if shorter, the
3 period of employment immediately preceding that period, times the number of months of credit
4 being purchased must be used. Employees must be allowed up to three times the period of
5 military service or five years, whichever is less, to make any required payments. This provision
6 applies to all qualifying periods of military service since October 1, 1994. Effective for years
7 after December 31, 2008, compensation for purposes of Internal Revenue Code section 415
8 [26 U.S.C. 415], as amended, includes military differential wage payments, as defined in
9 Internal Revenue Code section 3401(h) [26 U.S.C. 3401(h)], as amended. Any payments made
10 by the member to receive qualifying credit inconsistent with this provision must be refunded.
11 Employees shall make application to the employer for credit and provide a DD Form 214 to
12 verify service. After December 31, 2006, if a participating member dies while performing
13 qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code
14 [26 U.S.C. 414(u)(5)], as amended, the deceased member's beneficiaries are entitled to any
15 death benefits, other than credit for years of service for purposes of benefits, which would have
16 been provided under the plan if the participating member had resumed employment and then
17 terminated employment on account of death. The period of that member's qualified military
18 service is treated as vesting service under the plan.

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

21 **39-03.1-11.2. Internal Revenue Code compliance.**

22 The board shall administer the plan in compliance with the following sections of the Internal
23 Revenue Code, as amended, as it applies for governmental plans.

- 24 1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A)
25 of the Internal Revenue Code.
 - 26 a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal
27 Revenue Code, as approved by the legislative assembly, must be adjusted under
28 section 415(d) of the Internal Revenue Code, effective January first of each year
29 following a regular legislative session. The adjustment of the defined benefit
30 dollar limitation under section 415(d) applies to participating members who have
31 had a separation from employment, but that member's benefit payments may not

- 1 reflect the adjusted limit prior to January first of the calendar year in which the
2 adjustment applies.
- 3 b. If a participating member's benefit is increased by plan amendment after the
4 commencement of benefit payments, the member's annual benefit may not
5 exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the
6 Internal Revenue Code, as adjusted under section 415(d) for the calendar year in
7 which the increased benefit is payable.
- 8 c. If a participating member is, or ever has been, a participant in another defined
9 benefit plan maintained by the employer, the sum of the participant's annual
10 benefits from all the plans may not exceed the defined benefit dollar limitation
11 under section 415(b)(1)(A) of the Internal Revenue Code. If the participating
12 member's employer-provided benefits under all such defined benefit plans would
13 exceed the defined benefit dollar limitation, the benefit must be reduced to
14 comply with section 415 of the Internal Revenue Code. This reduction must be
15 made pro rata between the plans, in proportion to the participating member's
16 service in each plan.
- 17 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code,
18 including the incidental death benefit requirements under section 401(a)(9)(G), and the
19 regulations issued under that provision to the extent applicable to governmental plans.
20 Accordingly, benefits must be distributed or begin to be distributed no later than a
21 member's required beginning date, and the required minimum distribution rules
22 override any inconsistent provision of this chapter. A member's required beginning
23 date is April first of the calendar year following the later of the calendar year in which
24 the member attains age seventy and one-half or terminates employment.
- 25 3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue
26 Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).
- 27 4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly,
28 a distributee may elect to have an eligible rollover distribution, as defined in
29 section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible
30 retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code,
31 specified by the distributee.

- 1 5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued,
2 the rights of all affected participating members to accrued retirement benefits under
3 this chapter as of the date of termination or discontinuance is nonforfeitable, to the
4 extent then funded.

5 **SECTION 4. AMENDMENT.** Subsection 3 of section 39-03.1-14.1 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 3. Pursuant to rules adopted by the board, a member who has service credit in the
8 system and in any of the alternate plans described in subdivision a or b of
9 subsection 1 is entitled to benefits under this chapter. The employee may elect to have
10 benefits calculated using the benefit formula in section 39-03.1-11 under either of the
11 following calculation methods:

- 12 a. By using the final average of the highest salary received by the member for any
13 thirty-six months employed during the last one hundred twenty months of
14 employment in the highway patrolmen's retirement system as calculated in
15 section 39-03.1-11. If the participating member has worked for less than thirty-six
16 months at retirement, the final average salary is the average salary for the total
17 months of employment.
- 18 b. Using the final average of the highest salary received by the member for any
19 thirty-six months during the last one hundred twenty months of employment as
20 calculated in section 39-03.1-11, with service credit not to exceed one month in
21 any month when combined with the service credit earned in the alternate
22 retirement system.

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

25 **SECTION 5. AMENDMENT.** Subsection 1 of section 54-52-05 of the North Dakota Century
26 Code is amended and reenacted as follows:

- 27 1. Every eligible ~~governmental unit~~ participating political subdivision employee ~~concurring-~~
28 ~~in,~~ at the time the political subdivision joins the plan must so state in writing if the
29 employee concurs in the plan and all future eligible employees of the participating
30 political subdivision are participating members in the plan and must be enrolled in the
31 plan within the first month of employment. Except as otherwise provided by law, every

1 other eligible governmental unit employee of a participating governmental unit is a
2 participating member in the plan and must be enrolled in the plan within the first month
3 of employment. An employee who was not enrolled in the retirement system when
4 eligible to participate must be enrolled immediately upon notice of the employee's
5 eligibility, unless the employee waives in writing the employee's right to participate for
6 the previous time of eligibility, to avoid contributing to the fund for past service. An
7 employee who is eligible for normal retirement who accepts a retirement benefit under
8 this chapter and who subsequently becomes employed with a participating employer
9 other than the employer with which the employee was employed at the time the
10 employee retired under this chapter may, before ~~reenrolling~~being reenrolled in the
11 retirement plan within the first month of employment, elect to permanently waive future
12 participation in the retirement plan and the retiree health program and maintain that
13 employee's retirement status. An employee making this election is not required to
14 make any future employee contributions to the public employees retirement system
15 nor is the employee's employer required to make any further contributions on behalf of
16 that employee.

17 **SECTION 6. AMENDMENT.** Subsection 3 of section 54-52-17 of the North Dakota Century
18 Code is amended and reenacted as follows:

19 3. Retirement dates are defined as follows:

- 20 a. Normal retirement date, except for a national guard security officer or firefighter
21 or a peace officer or correctional officer employed by the bureau of criminal
22 investigation or by a political subdivision, is:
- 23 (1) The first day of the month next following the month in which the member
24 attains the age of sixty-five years; or
- 25 (2) When the member has a combined total of years of service credit and years
26 of age equal to eighty-five and has not received a retirement benefit under
27 this chapter.
- 28 b. Normal retirement date for a national guard security officer or firefighter is the first
29 day of the month next following the month in which the national guard security
30 officer or firefighter attains the age of fifty-five years and has completed at least

three eligible years of employment as a national guard security officer or firefighter.

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

(1) The first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty-five years and has completed at least three eligible years of employment as a peace officer or correctional officer; or

(2) When the peace officer or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.

d. Normal retirement date for a peace officer employed by the bureau of criminal investigation is:

(1) The first day of the month next following the month in which the peace officer attains the age of fifty-five years and has completed at least three eligible years of employment as a peace officer; or

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

e. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.

f. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by the bureau of

criminal investigation or by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.

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

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

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

SECTION 7. AMENDMENT. Subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

1. a. For the purpose of determining eligibility for benefits under this chapter, an employee's years of service credit is the total of the years of service credit earned in the public employees retirement system and the years of service credit earned in any number of the following:
 - (1) The teachers' fund for retirement.

(2) The highway patrolmen's retirement system.

(3) The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education.

Service credit may not exceed twelve months of credit per year.

b. Pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17. A permanent employee or a temporary employee employed before August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

(1) ~~The final average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment in the public employees retirement system~~ as calculated in section 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.

(2) ~~The final average of the highest salary received by the member for any thirty-six consecutive months during the last one hundred twenty months of~~ as calculated in section 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

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

SECTION 8. AMENDMENT. Section 54-52-17.14 of the North Dakota Century Code is amended and reenacted as follows:

54-52-17.14. Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.

A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Effective for years after December 31, 2008, compensation for purposes of Internal Revenue Code section 415 [26 U.S.C. 415], as amended, includes military differential wage payments, as defined in Internal Revenue Code section 3401(h) [26 U.S.C. 3401(h)], as amended. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service. If a participating member dies after December 31, 2006, while performing qualified military service, as defined in section 414(u)(5) [26 U.S.C. 414(u)(5)] of the Internal Revenue Code, as amended, the deceased member's beneficiaries are entitled to any death benefits, other than credit for years of service for purposes of benefits, that would have been provided under the plan if the participating member had resumed employment and then terminated employment on account of death. The period of such member's qualified military service is treated as vesting service under the plan.

SECTION 9. AMENDMENT. Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

54-52-28. Internal Revenue Code compliance.

The board shall administer the plan in compliance with the following sections of the Internal Revenue Code ~~in effect on August 1, 2013, as amended~~, as it applies for governmental plans.

- 1 1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A)
2 of the Internal Revenue Code.
3 a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal
4 Revenue Code, as approved by the legislative assembly, must be adjusted under
5 section 415(d) of the Internal Revenue Code, effective January first of each year
6 following a regular legislative session. The adjustment of the defined benefit
7 dollar limitation under section 415(d) applies to participating members who have
8 had a separation from employment, but that member's benefit payments may not
9 reflect the adjusted limit prior to January first of the calendar year in which the
10 adjustment applies.
11 b. If a participating member's benefit is increased by plan amendment after the
12 commencement of benefit payments, the member's annual benefit may not
13 exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the
14 Internal Revenue Code, as adjusted under section 415(d) for the calendar year in
15 which the increased benefit is payable.
16 c. If a participating member is, or ever has been, a participant in another defined
17 benefit plan maintained by the employer, the sum of the participant's annual
18 benefits from all the plans may not exceed the defined benefit dollar limitation
19 under section 415(b)(1)(A) of the Internal Revenue Code. If the participating
20 member's employer-provided benefits under all such defined benefit plans would
21 exceed the defined benefit dollar limitation, the benefit must be reduced to
22 comply with section 415 of the Internal Revenue Code. The reduction must be
23 made pro rata between the plans, in proportion to the participating member's
24 service in each plan.
25 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code,
26 including the incidental death benefit requirements under section 401(a)(9)(G), and the
27 regulations issued under that provision to the extent applicable to governmental plans.
28 Accordingly, benefits must be distributed or begin to be distributed no later than a
29 member's required beginning date, and the required minimum distribution rules
30 override any inconsistent provision of this chapter. A member's required beginning

1 date is April first of the calendar year following the later of the calendar year in which
2 the member attains age seventy and one-half or terminates employment.

3 3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue
4 Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).

5 4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly,
6 a distributee may elect to have an eligible rollover distribution, as defined in
7 section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible
8 retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code,
9 specified by the distributee.

10 5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued,
11 the rights of all affected participating members to accrued retirement benefits under
12 this chapter as of the date of termination or discontinuance is nonforfeitable, to the
13 extent then funded.

14 **SECTION 10. AMENDMENT.** Subsection 1 of section 54-52.1-03 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 1. Any eligible employee may be enrolled in the uniform group insurance program
17 created by this chapter by requesting enrollment with the employing department. If an
18 eligible employee does not enroll in the uniform group insurance program at the time
19 of beginning employment, in order to enroll at a later time the eligible employee must
20 meet minimum requirements established by the board to enroll thereafter. An
21 employing department may not require an active eligible employee to request
22 coverage under the uniform group insurance program as a prerequisite to receive the
23 minimum employer-paid life insurance benefits coverage or employee assistance
24 program benefits coverage.

25 **SECTION 11. AMENDMENT.** Section 54-52.1-03.1 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **54-52.1-03.1. Certain political subdivisions authorized to join uniform group**
28 **insurance program - Employer contribution.**

29 Alf eligible under federal law, a political subdivision may extend the benefits of the uniform
30 group insurance program under this chapter to its permanent employees, subject to minimum
31 requirements established by the board and a minimum period of participation of sixty months. If

1 the political subdivision withdraws from participation in the uniform group insurance program,
2 before completing sixty months of participation, unless federal or state laws or rules are
3 modified or interpreted in a way that makes participation by the political subdivision in the
4 uniform group insurance program no longer allowable or appropriate, the political subdivision
5 shall make payment to the board in an amount equal to any expenses incurred in the uniform
6 group insurance program that exceed income received on behalf of the political subdivision's
7 employees as determined under rules adopted by the board. The Garrison Diversion
8 Conservancy District, and district health units required to participate in the public employees
9 retirement system under section 54-52-02, shall participate in the uniform group insurance
10 program under the same terms and conditions as state agencies. A retiree who has accepted a
11 retirement allowance from a participating political subdivision's retirement plan may elect to
12 participate in the uniform group under this chapter without meeting minimum requirements at
13 age sixty-five, when the employee's spouse reaches age sixty-five, upon the receipt of a benefit,
14 when the political subdivision joins the uniform group insurance plan if the retiree was a
15 member of the former plan, or when the spouse terminates employment. If a retiree or surviving
16 spouse does not elect to participate at the times specified in this section, the retiree or surviving
17 spouse must meet the minimum requirements established by the board. Each retiree or
18 surviving spouse shall pay directly to the board the premiums in effect for the coverage then
19 being provided. The board may require documentation that the retiree has accepted a
20 retirement allowance from an eligible retirement plan other than the public employees
21 retirement system.

22 **SECTION 12. AMENDMENT.** Section 54-52.1-03.4 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **54-52.1-03.4. Temporary employees and employees on unpaid leave of absence.**

25 A temporary employee employed before August 1, 2007, may elect to participate in the
26 uniform group insurance program by completing the necessary enrollment forms and qualifying
27 under the medical underwriting requirements of the program if such election is made before
28 January 1, 2015, and if the temporary employee is participating in the uniform group insurance
29 program on January 1, 2015. A temporary employee employed on or after August 1, 2007, is
30 only eligible In order for a temporary employee employed after July 31, 2007, to qualify to
31 participate in the uniform group insurance program if, the employee is must be employed at least

1 twenty hours per week and; must be employed at least twenty weeks each year of employment;
2 must make the election to participate before January 1, 2015; and must be participating in the
3 uniform group insurance program as of January 1, 2015. ATo be eligible to participate in the
4 uniform group insurance program, a temporary employee first employed after December 31,
5 20132014, or any temporary employee not participating in the uniform group insurance program
6 as of January 1, 2015, is eligible to participate in the uniform group insurance program only if
7 the employee meetsmust meet the definition of a full-time employee under section 4980H(c)(4)
8 of the Internal Revenue Code [26 U.S.C. 4980H(c)(4)]. ~~The~~Monthly, the temporary employee or
9 the temporary employee's employer shall pay ~~monthly~~ to the board the premiums in effect for
10 the coverage being provided. In the case of a temporary employee who is an applicable
11 taxpayer as defined in section 36B(c)(1)(A) of the Internal Revenue Code [26 U.S.C. 36B(c)(1)
12 (A)], the temporary employee's required contribution for medical and hospital benefits self-only
13 coverage may not exceed the maximum employee required contribution specified under
14 section 36B(c)(2)(C) of the Internal Revenue Code [26 U.S.C. 36B(c)(2)(C)], and the employer
15 shall pay any difference between the maximum employee required contribution for medical and
16 hospital benefits self-only coverage and the cost of the premiums in effect for this coverage. An
17 employer may pay health or life insurance premiums for a permanent employee on an unpaid
18 leave of absence. A political subdivision, department, board, or agency may make a contribution
19 for coverage under this section.

20 **SECTION 13. AMENDMENT.** Section 54-52.1-18 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **54-52.1-18. High-deductible health plan alternative with health savings account**
23 **option.**

- 24 1. The board shall develop and implement a high-deductible health plan as an alternative
25 to the plan under section ~~54-52.1-06~~54-52.1-02. The high-deductible health plan
26 alternative with a health savings account must be made available to state employees
27 by January 1, 2012. ~~The~~After June 30, 2015, at the board's discretion, the
28 high-deductible health plan alternative may be offered, at the discretion of the board,
29 to political subdivisions after June 30, 2013for coverage of political subdivision
30 employees. If a political subdivision elects this high-deductible option the political
31 subdivision may not offer the plan under section 54-52.1-02.

2. Health savings account fees for participating state employees must be paid by the employer. ~~Subject~~

a. Except as provided in subdivision b, subject to the limits of section 223(b) of the Internal Revenue Code [26 U.S.C. 233(b)], the difference between the cost of the single and family premium for eligible state employees under section 54-52.1-06 and the premium for those employees electing to participate under the high-deductible health plan under this section must be deposited in a health savings account for the benefit of each participating employee.

b. If the public employees retirement system is unable to establish a health savings account due to the employee's ineligibility under federal or state law or due to failure of the employee to provide necessary information in order to establish the account, the system is not responsible for depositing the health savings account contribution. The member will remain a participant in the high-deductible health plan regardless of whether a health savings account is established.

3. Each new state employee ~~of a participating employer under this section~~ must be provided the opportunity to elect the high-deductible health plan alternative. At least once each biennium, the board shall ~~have~~provide an open enrollment period allowing existing state employees ~~of a participating employer under this section~~ or a political subdivision to change their coverage.

SECTION 14. AMENDMENT. Section 54-52.6-09.4 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09.4. Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.

A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the

1 period of employment immediately preceding that period, times the number of months of credit
2 being purchased must be used. Employees must be allowed up to three times the period of
3 military service or five years, whichever is less, to make any required payments. This provision
4 applies to all qualifying periods of military service since October 1, 1994. Effective for years
5 after December 31, 2008, compensation for purposes of Internal Revenue Code section 415
6 [26 U.S.C. 415], as amended, includes military differential wage payments, as defined in
7 Internal Revenue Code section 3401(h) [26 U.S.C. 3401(h)], as amended. Any payments made
8 by the member to receive qualifying credit inconsistent with this provision must be refunded.
9 Employees shall make application to the employer for credit and provide a DD Form 214 to
10 verify service. After December 31, 2006, if a participating member dies while performing
11 qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code
12 [26 U.S.C. 414(u)(5)], as amended, the deceased member's beneficiaries are entitled to any
13 death benefits, other than credit for years of service for purposes of benefits, which would have
14 been provided under the plan if the participating member had resumed employment and then
15 terminated employment on account of death. The period of that member's qualified military
16 service is treated as vesting service under the plan.

17 **SECTION 15. AMENDMENT.** Section 54-52.6-21 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **54-52.6-21. Internal Revenue Code compliance.**

20 The board shall administer the plan in compliance with the following sections of the Internal
21 Revenue Code ~~in effect on August 1, 2013, as amended~~, as they apply to governmental plans:

- 22 1. Section 415, including the defined contribution limitations under section 415(c)(1)(A)
23 and (B) of the Internal Revenue Code and the Treasury Regulations thereunder, which
24 are incorporated herein by reference.
 - 25 a. In accordance with the defined contribution limitations under section 415(c) of the
26 Internal Revenue Code, annual additions (as defined in section 415(c)(2) of the
27 Internal Revenue Code) under this plan may not exceed the limitations set forth
28 in section 415(c)(1)(A) and (B), as adjusted under section 415(d) of the Internal
29 Revenue Code, effective January first of each year following a regular legislative
30 session.

1 b. If a participating member's aggregate annual additions exceed the defined
2 contribution limitations under section 415(c) of the Internal Revenue Code, the
3 member's annual additions must be reduced to the extent necessary to comply
4 with section 415(c) of the Internal Revenue Code and the Treasury Regulations
5 thereunder.

6 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code
7 and the regulations issued under that provision to the extent applicable to
8 governmental plans. Accordingly, benefits must be distributed or begin to be
9 distributed no later than a member's required beginning date, and the required
10 minimum distribution rules override any inconsistent provision of this chapter. A
11 member's required beginning date is April first of the calendar year following the later
12 of the calendar year in which the member attains age seventy and one-half or
13 terminates employment.

14 3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue
15 Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).

16 4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly,
17 a distributee may elect to have an eligible rollover distribution, as defined in section
18 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible
19 retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code,
20 specified by the distributee.

21 5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued,
22 the rights of all affected participating members to accrued retirement benefits under
23 this chapter as of the date of termination or discontinuance is nonforfeitable, to the
24 extent then funded.

25 **SECTION 16. RETROACTIVE APPLICATION.** Sections 2, 8, and 14 are retroactive in
26 application.