

Sixty-fourth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1080**

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 section 54-52-02.9, subsection 2 of section 54-52-05,  
2 sections 54-52-06, 54-52-06.4, and 54-52-17, subsection 1 of section 54-52-17.2, and sections  
3 54-52.6-02 and 54-52.6-09 of the North Dakota Century Code, relating to increases in employer  
4 and employee contributions under the public employees retirement system defined benefit and  
5 defined contribution plans, decreased employee contributions under the public employees  
6 retirement system for peace officers employed by the bureau of criminal investigation, and  
7 benefit changes for employees first enrolled after December 31, 2015; and to provide a penalty.

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

9 **SECTION 1. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **54-52-02.9. Participation by temporary employees.**

12 A temporary employee may elect, within one hundred eighty days of beginning employment,  
13 to participate in the public employees retirement system and receive credit for service after  
14 enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight  
15 and twelve-hundredths percent times the temporary employee's present monthly salary. The  
16 amount required to be paid by a temporary employee increases by two percent times the  
17 temporary employee's present monthly salary beginning with the monthly reporting period of  
18 January 2012; ~~and; with an additional two percent increase, beginning with the reporting period~~  
19 ~~of January 2013; and; with an additional increase of two percent, beginning with the monthly~~  
20 ~~reporting period of January 2014; and with an additional increase of two percent, beginning with~~  
21 ~~the monthly reporting period of January 2016.~~ The temporary employee shall also pay the  
22 required monthly contribution to the retiree health benefit fund established under section  
23 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section  
24 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary

1 employee may continue to participate as a temporary employee in the public employees  
2 retirement system until termination of employment or reclassification of the temporary employee  
3 as a permanent employee. A temporary employee may not purchase any additional credit,  
4 including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

5 **SECTION 2. AMENDMENT.** Subsection 2 of section 54-52-05 of the North Dakota Century  
6 Code is amended and reenacted as follows:

7 2. Each member must be assessed and required to pay monthly four percent of the  
8 monthly salary or wage paid to the member, and such assessment must be deducted  
9 and retained out of such salary in equal monthly installments commencing with the  
10 first month of employment. Member contributions increase by one percent of the  
11 monthly salary or wage paid to the member beginning with the monthly reporting  
12 period of January 2012,~~and;~~ with an additional increase of one percent, beginning  
13 with the monthly reporting period of January 2013,~~and;~~ with an additional increase of  
14 one percent, beginning with the monthly reporting period of January 2014; and with an  
15 additional increase of one percent, beginning with the monthly reporting period of  
16 January 2016.

17 **SECTION 3. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **54-52-06. Employer's contribution to retirement plan.**

20 Each governmental unit shall contribute an amount equal to four and twelve-hundredths  
21 percent of the monthly salary or wage of a participating member. Governmental unit  
22 contributions increase by one percent of the monthly salary or wage of a participating member  
23 beginning with the monthly reporting period of January 2012,~~and;~~ with an additional increase of  
24 one percent, beginning with the reporting period of January 2013,~~and with;~~ an additional  
25 increase of one percent, beginning with the monthly reporting period of January 2014; and with  
26 an additional increase of one percent, beginning with the monthly reporting period of January  
27 2016. For those members who elect to exercise their rights under section 54-52-17.14, the  
28 employing governmental unit, or in the case of a member not presently under covered  
29 employment the most recent employing governmental unit, shall pay the associated employer  
30 contribution. If the employee's contribution is paid by the governmental unit under subsection 3  
31 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the

1 required employee's contribution. Each governmental unit shall pay the contribution monthly, or  
2 in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement  
3 fund from its funds appropriated for payroll and salary or any other funds available for these  
4 purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an  
5 election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty  
6 dollars and, as interest, one percent of the amount due for each month of delay or fraction  
7 thereof after the payment became due. In lieu of assessing a civil penalty or one percent per  
8 month, or both, interest at the actuarial rate of return may be assessed for each month the  
9 contributions are delinquent. If contributions are paid within ninety days of the date they became  
10 due, penalty and interest to be paid on delinquent contributions may be waived. An employer is  
11 required to submit contributions for any past eligible employee who was employed after July 1,  
12 1977, for which contributions were not made if the employee would have been eligible to  
13 become vested had the employee participated and if the employee elects to join the public  
14 employees retirement system. Employer contributions may not be assessed for eligible service  
15 that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall  
16 report to each session of the legislative assembly the contributions necessary, as determined by  
17 the actuarial study, to maintain the fund's actuarial soundness.

18 **SECTION 4. AMENDMENT.** Section 54-52-06.4 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **54-52-06.4. Contribution by peace officers employed by the bureau of criminal**  
21 **investigation - Employer contribution.**

22 Each peace officer employed by the bureau of criminal investigation who is a member of the  
23 public employees retirement system is assessed and shall pay monthly four percent of the  
24 employee's monthly salary. Peace officer contributions increase by one percent of the member's  
25 monthly salary beginning with the monthly reporting period of January 2012, and with an  
26 additional increase of one percent, beginning with the reporting period of January 2013. Peace  
27 officer contributions decrease by one-half of one percent of the member's monthly salary  
28 beginning with the monthly reporting period of January 2016. The assessment must be  
29 deducted and retained out of the employee's salary in equal monthly installments. The peace  
30 officer's employer shall contribute an amount determined by the board to be actuarially required  
31 to support the level of benefits specified in section 54-52-17. The employer's contribution must

1 be paid from funds appropriated for salary or from any other funds available for such purposes.  
2 If the peace officer's assessment is paid by the employer under subsection 3 of section  
3 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace  
4 officer's assessment.

5 **SECTION 5. AMENDMENT.** Section 54-52-17 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **54-52-17. Formulation of plan.**

8 Participating members shall receive benefits according to this section and according to  
9 rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a  
10 prior service benefit if the person was not continuously employed by a governmental unit in  
11 North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

- 12 1. Participating members shall receive credit for full-time employment or its equivalent  
13 from the date they attain eligibility until their normal retirement date, postponed  
14 retirement date, or early retirement date, as defined in this section. Part-time  
15 employment will be recognized as full-time employment on a prorated basis as the  
16 board may prescribe.
- 17 2. Retirement benefits are calculated from the participating member's final average  
18 salary, which is the average of the highest salary received by the member for any  
19 thirty-six months employed during the last one hundred twenty months of employment.  
20 For members who terminate employment on or after August 1, 2010, final average  
21 salary is the average of the highest salary received by the member for any thirty-six  
22 months employed during the last one hundred eighty months of employment. For  
23 members who terminate employment between July 31, 2005, and August 1, 2010, final  
24 average salary is the average of the highest salary received by the member for any  
25 thirty-six months employed during the period for which the board has appropriate and  
26 accurate salary records on its electronic database, but that period may not be more  
27 than the last one hundred eighty months of employment. Except for a national guard  
28 security officer or firefighter, a peace officer or correctional officer employed by the  
29 bureau of criminal investigation or by a political subdivision, or a supreme court or  
30 district court judge, for members first enrolled after December 31, 2015, final average  
31 salary is the average salary earned in the five highest periods of twelve consecutive

months employed during the last one hundred eighty months of employment. Months not employed without earnings are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the For a participating member first enrolled before January 1, 2016, who has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment. Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, for members first enrolled after December 31, 2015, who worked for less than sixty months at the normal retirement date, the final average salary is the average salary for the total months of employment.

3. Retirement dates are defined as follows:

- a. Normal 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:
  - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
  - (2) When the member 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.
- b. Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, normal retirement date for members first enrolled after December 31, 2015 is:
  - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
  - (2) When the member has a combined total of years of service credit and years of age equal to ninety and the member attains a minimum age of sixty and has not received a retirement benefit under this chapter.
- c. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security

1 officer or firefighter attains the age of fifty-five years and has completed at least  
2 three eligible years of employment as a national guard security officer or  
3 firefighter.

4 ~~e.d.~~ Normal retirement date for a peace officer or correctional officer employed by a  
5 political subdivision is:

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

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

13 ~~e.e.~~ Normal retirement date for a peace officer employed by the bureau of criminal  
14 investigation is:

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

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

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

24 ~~f.g.~~ Early retirement date, except for a national guard security officer or firefighter or a  
25 peace officer or correctional officer employed by the bureau of criminal  
26 investigation or by a political subdivision, is the first day of the month next  
27 following the month in which the member attains the age of fifty-five years and  
28 has completed three years of eligible employment. For a national guard security  
29 officer or firefighter, early retirement date is the first day of the month next  
30 following the month in which the national guard security officer or firefighter  
31 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-h. 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.

4. The board shall calculate retirement benefits as follows:

- a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

- 1                   (1) Service benefit equals two percent of final average salary multiplied by the
- 2                   number of years of service employment.
- 3                   (2) Prior service benefit equals two percent of final average salary multiplied by
- 4                   the number of years of prior service employment.
- 5           b. Normal retirement benefits for all supreme and district court judges under the
- 6           public employees retirement system reaching normal retirement date equal an
- 7           annual amount, payable monthly, comprised of a benefit as defined in this
- 8           chapter, determined as follows:
- 9           (1) Benefits must be calculated from the time of appointment or election to the
- 10           bench and must equal three and one-half percent of final average salary
- 11           multiplied by the first ten years of judicial service, two and eighty hundredths
- 12           percent of final average salary multiplied by the second ten years of judicial
- 13           service, and one and one-fourth percent of final average salary multiplied by
- 14           the number of years of judicial service exceeding twenty years.
- 15           (2) Service benefits must include, in addition, an amount equal to the percent
- 16           specified in subdivision a of final average salary multiplied by the number of
- 17           years of nonjudicial employee service and employment.
- 18           c. Postponed retirement benefits are calculated as for single life benefits for those
- 19           members who retired on or after July 1, 1977.
- 20           d. Early retirement benefits are calculated as for single life benefits accrued to the
- 21           date of termination of employment, but must be actuarially reduced to account for
- 22           benefit payments beginning prior to the normal retirement date, which is the
- 23           earlier of age sixty-five or the age at which current service plus age equals
- 24           eighty-five. Except for a national guard security officer or firefighter, a peace
- 25           officer or correctional officer employed by the bureau of criminal investigation or
- 26           by a political subdivision, or a supreme court or district court judge, early
- 27           retirement benefits for members first enrolled after December 31, 2015, are
- 28           calculated for single life benefits accrued to the date of termination of
- 29           employment, but must be reduced by a fixed rate of eight percent per year to
- 30           account for benefit payments beginning before the normal retirement date. A
- 31           retiree, other than a supreme or district court judge, is eligible for early retirement



benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.

e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workforce safety and insurance benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.

5. Upon termination of employment after completing three years of eligible employment, except for supreme and district court judges, who must complete five years of eligible employment, but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date in one of the optional forms provided in subsection 9. Members who have delayed or inadvertently failed to apply for retirement benefits to commence on their normal retirement date may choose to receive either a lump sum payment equal to the amount of missed payments, or an actuarial increase to the form of benefit the member has selected, which increase must reflect the missed payments.

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

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

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

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

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

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

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

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

21 (3) If the member dies on or after the member's normal retirement date, the  
22 payment of a monthly retirement benefit equal to an amount that would have  
23 been paid to the surviving spouse if the member had retired on the day of  
24 the member's death and had selected a one hundred percent joint and  
25 survivor annuity, payable until the spouse dies. A surviving spouse who  
26 received a benefit under this subsection as of July 31, 1995, is entitled to  
27 the higher of that person's existing benefit or the equivalent of the accrued  
28 benefit available under the one hundred percent joint and survivor provision  
29 as if the deceased member were of normal retirement age, with the increase  
30 payable beginning August 1, 1995.

- 1        7. If a member not coming under the provisions of subsection 6 terminates employment  
2        because of death, permanent and total disability, or any voluntary or involuntary  
3        reason prior to retirement, the member or the member's designated beneficiary is  
4        entitled to the member's account balance at termination. The board automatically shall  
5        refund a member's account balance if the member has completed less than three  
6        years of eligible employment, has an account balance of less than one thousand  
7        dollars, and was not a supreme or district court judge. If the member was a supreme  
8        or district court judge, the board automatically shall refund a member's account  
9        balance if the member completed less than five years of eligible employment. A  
10       member may waive the refund if the member submits a written statement to the board,  
11       within thirty days after termination, requesting that the member's account balance  
12       remain in the fund.
- 13       8. The surviving spouse of a member receiving retirement benefits must be the  
14       member's primary beneficiary unless there is no surviving spouse or the surviving  
15       spouse designates an alternate beneficiary in writing. If a member receiving retirement  
16       benefits or the member's surviving spouse receiving retirement benefits dies before  
17       the total amount of benefits paid to either or both equals the amount of the member's  
18       account balance at retirement, the difference must be paid to the named beneficiary of  
19       the recipient or, if there is no named beneficiary, to the recipient's estate.
- 20       9. The board shall adopt rules providing for the receipt of retirement benefits in the  
21       following optional forms:
- 22       a. Single life.
- 23       b. An actuarially equivalent joint and survivor option, with fifty percent or one  
24       hundred percent options.
- 25       c. Actuarially equivalent life with ten-year or twenty-year certain options.
- 26       d. An actuarially equivalent partial lump sum distribution option with a twelve-month  
27       maximum lump sum distribution.
- 28       e. An actuarially equivalent graduated benefit option with either a one percent or  
29       two percent increase to be applied the first day of January of each year.
- 30       Except for supreme and district court judges, unless a member specifically requests  
31       that the member receive benefits according to one of these options at the time of

1 applying for retirement, all retirement benefits must be in the form of a single life  
2 benefit. For supreme and district court judges, unless a member specifically requests  
3 that the member receive benefits according to one of these options at the time of  
4 applying for retirement, all retirement benefits must be in the form of a lifetime monthly  
5 pension with fifty percent of the benefit continuing for the life of the surviving spouse, if  
6 any.

7 10. The fund may accept rollovers from other eligible plans under rules adopted by the  
8 board for the purchase of additional service credit, but only to the extent the transfer is  
9 a rollover contribution that meets the requirement of section 408 of the Internal  
10 Revenue Code.

11 11. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue  
12 Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code  
13 section 403(b) annuity or Internal Revenue Code section 457 deferred compensation  
14 plan for the purchase of permissive service credit, as defined in Internal Revenue  
15 Code section 415(n)(3)(A) or as repayment of a cashout from a governmental plan  
16 under Internal Revenue Code section 415(k)(3).

17 12. The board may establish individual retirement accounts and individual retirement  
18 annuities as permitted under section 408(q) of the Internal Revenue Code to allow  
19 employees to make voluntary employee contributions. The board may adopt rules to  
20 implement and administer the accounts and annuities under this section.

21 **SECTION 6. AMENDMENT.** Subsection 1 of section 54-52-17.2 of the North Dakota  
22 Century Code is amended and reenacted as follows:

- 23 1. a. For the purpose of determining eligibility for benefits under this chapter, an  
24 employee's years of service credit is the total of the years of service credit earned  
25 in the public employees retirement system and the years of service credit earned  
26 in any number of the following:
- 27 (1) The teachers' fund for retirement.
  - 28 (2) The highway patrolmen's retirement system.
  - 29 (3) The teachers' insurance and annuity association of America - college  
30 retirement equities fund (TIAA-CREF), for service credit earned while  
31 employed by North Dakota institutions of higher education.

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

2 b. Pursuant to rules adopted by the board, an employee who has service credit in  
3 the system and in any of the plans described in paragraphs 1 and 2 of  
4 subdivision a is entitled to benefits under this chapter. The employee may elect to  
5 have benefits calculated using the benefit formula in section 54-52-17 under  
6 either of the following methods:

7 (1) The average of the highest salary received by the member for any thirty-six  
8 months employed during the last one hundred twenty months of  
9 employment in the public employees retirement system. If the participating  
10 member has worked for less than thirty-six months at retirement, the final  
11 average salary is the average salary for the total months of employment. If  
12 the participating member was first enrolled after December 31, 2015, and  
13 worked for less than sixty months at retirement, the final average salary is  
14 the average salary for the total months of employment.

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

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

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

24 **54-52.6-02. (Effective through July 31, 2017) Election.**

25 1. The board shall provide an opportunity for eligible employees who are new members  
26 of the public employees retirement system under chapter 54-52 to transfer to the  
27 defined contribution plan under this chapter pursuant to the rules and policies adopted  
28 by the board. An election made by a member of the public employees retirement  
29 system under chapter 54-52 to transfer to the defined contribution retirement plan  
30 under this chapter is irrevocable. For an individual who elects to transfer membership  
31 from the public employees retirement system under chapter 54-52 to the defined

1 contribution retirement plan under this chapter, the board shall transfer a lump sum  
2 amount from the public employees retirement system fund to the participating  
3 member's account in the defined contribution retirement plan under this chapter.  
4 However, if the individual terminates employment prior to receiving the lump sum  
5 transfer under this section, the election made is ineffective and the individual remains  
6 a member of the public employees retirement system under chapter 54-52 and retains  
7 all the rights and privileges under that chapter. This section does not affect an  
8 individual's right to health benefits or retiree health benefits under chapter 54-52.1.

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

14 3. A participating member who becomes a temporary employee may still participate in  
15 the defined contribution retirement plan upon filing an election with the board within  
16 one hundred eighty days of transferring to temporary employee status. The  
17 participating member may not become a member of the defined benefit plan as a  
18 temporary employee. The temporary employee electing to participate in the defined  
19 contribution retirement plan shall pay monthly to the fund an amount equal to eight  
20 and twelve-hundredths percent times the temporary employee's present monthly  
21 salary. The amount required to be paid by a temporary employee increases by two  
22 percent times the temporary employee's present monthly salary beginning with the  
23 monthly reporting period of January 2012 ~~and;~~ with an additional increase of two  
24 percent, beginning with the monthly reporting period of January 2013, ~~and;~~ with an  
25 additional increase of two percent, beginning with the monthly reporting period of  
26 January 2014; and with an additional increase of two percent, beginning with the  
27 monthly reporting period of January 2016. The temporary employee shall also pay the  
28 required monthly contribution to the retiree health benefit fund established under  
29 section 54-52.1-03.2. This contribution must be recorded as a member contribution  
30 pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's  
31 contributions. A temporary employee may continue to participate as a temporary

employee until termination of employment or reclassification of the temporary employee as a permanent employee.

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

**(Effective after July 31, 2017) Election.**

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

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

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



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

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

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

board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

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

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

6. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, ~~and;~~ with an additional increase of two percent, beginning with the monthly reporting period of January 2013, ~~and;~~ with an additional increase of two percent, beginning with the monthly reporting period of January 2014; and with an additional increase of two percent, beginning with the monthly reporting period of January 2016. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's

1 contributions. A temporary employee may continue to participate as a temporary  
2 employee until termination of employment or reclassification of the temporary  
3 employee as a permanent employee.

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

13 **SECTION 8. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **54-52.6-09. Contributions - Penalty.**

16 1. Each participating member shall contribute monthly four percent of the monthly salary  
17 or wage paid to the participant, and this assessment must be deducted from the  
18 participant's salary in equal monthly installments commencing with the first month of  
19 participation in the defined contribution retirement plan established under this chapter.  
20 Participating member contributions increase by one percent of the monthly salary or  
21 wage paid to the participant beginning with the monthly reporting period of  
22 January 2012,~~and;~~ with an additional increase of one percent, beginning with the  
23 reporting period of January 2013,~~and;~~ with an additional increase of one percent,  
24 beginning with the monthly reporting period of January 2014; and with an additional  
25 increase of one percent, beginning with the monthly reporting period of January 2016.

26 2. The employer shall contribute an amount equal to four and twelve-hundredths percent  
27 of the monthly salary or wage of a participating member. Employer contributions  
28 increase by one percent of the monthly salary or wage of a participating member  
29 beginning with the monthly reporting period of January 2012,~~and;~~ with an additional  
30 increase of one percent, beginning with the monthly reporting period of January 2013,  
31 ~~and;~~ with an additional increase of one percent, beginning with the monthly reporting

1           period of January 2014; and with an additional increase of one percent, beginning with  
2           the monthly reporting period of January 2016. If the employee's contribution is paid by  
3           the employer under subsection 3, the employer shall contribute, in addition, an amount  
4           equal to the required employee's contribution. The employer shall pay monthly such  
5           contribution into the participating member's account from its funds appropriated for  
6           payroll and salary or any other funds available for such purposes. If the employer fails  
7           to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as  
8           interest, one percent of the amount due for each month of delay or fraction thereof  
9           after the payment became due.

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