

Fifty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Wald

1 A BILL for an Act to create and enact chapter 54-52.6 of the North Dakota Century Code,
2 relating to a defined contribution retirement plan for nonclassified state employees; to amend
3 and reenact subsection 3 of section 54-52-01, section 54-52-26, and subsection 1 of section
4 54-52.1-03.2 of the North Dakota Century Code, relating to definitions, confidentiality of
5 records, and retiree health benefit fund contributions under the public employees retirement
6 system; to repeal section 54-52-02.5 of the North Dakota Century Code, relating to newly
7 appointed officials as members of the public employees retirement system; to provide a penalty;
8 to provide an appropriation; and to provide an effective date.

9 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

10 **SECTION 1. AMENDMENT.** Subsection 3 of section 54-52-01 of the 1997 Supplement
11 to the North Dakota Century Code is amended and reenacted as follows:

12 3. "Eligible employee" means all permanent employees who meet all of the eligibility
13 requirements set by this chapter and who are eighteen years or more of age, and
14 includes appointive and elective officials ~~at their sole election~~ who elect to remain
15 members of the retirement system; provided, that judges of the supreme and
16 district courts eligible under section 54-52-02.3 ~~and appointed officials eligible~~
17 ~~under section 54-52-02.5~~ are eligible employees and shall participate in the public
18 employees retirement system. Eligible employee does not include nonclassified
19 state employees who elect to become members of the retirement plan established
20 under chapter 54-52.6 and nonclassified state employees who enter upon the
21 payroll after December 31, 1999.

22 **SECTION 2. AMENDMENT.** Section 54-52-26 of the 1997 Supplement to the North
23 Dakota Century Code is amended and reenacted as follows:

1 **54-52-26. Confidentiality of records.** All records relating to the retirement benefits of
2 a member or a beneficiary under this chapter ~~and~~, chapter 54-52.2, and chapter 54-52.6 are
3 confidential and are not public records. This section does not prohibit any party from obtaining
4 this information from other agencies or governmental sources. Information and records may be
5 disclosed, under rules adopted by the board, only to:

- 6 1. A person to whom the member has given written consent to have the information
7 disclosed.
- 8 2. A person legally representing the member, upon proper proof of representation,
9 and unless the member specifically withholds consent.
- 10 3. A person authorized by a court order.
- 11 4. A member's participating employer, limited to information concerning the member's
12 years of service credit and years of age. Any information provided to the member's
13 participating employer under this subsection must remain confidential.

14 **SECTION 3. AMENDMENT.** Subsection 1 of section 54-52.1-03.2 of the 1997
15 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 16 1. The board shall establish a retiree health benefits fund account with the Bank of
17 North Dakota for the purpose of prefunding and providing hospital benefits
18 coverage and medical benefits coverage under the uniform group insurance
19 program for retired eligible employees or surviving spouses of retired eligible
20 employees and their dependents as provided in this chapter. The state shall
21 contribute monthly to the retiree health benefits fund an amount equal to one
22 percent of the monthly salaries and wages of all participating members of the
23 highway patrolmen's retirement system under chapter 39-03.1, and one percent of
24 the monthly salaries of all supreme or district court judges who are participating
25 members of the public employees retirement system under chapter 54-52. Each
26 governmental unit that contributes to the public employees retirement system fund
27 under section 54-52-06 or the retirement plan under chapter 54-52.6 shall
28 contribute monthly to the retiree health benefits fund an amount equal to one
29 percent of the monthly salaries or wages of all participating members of the public
30 employees retirement system under chapter 54-52 or chapter 54-52.6. The
31 employer of a national guard security officer or firefighter shall contribute monthly

to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all national guard security officers or firefighters participating in the public employees retirement system under chapter 54-52. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01. The board, as trustee of the fund and in exclusive control of its administration, shall:

- a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended.
- b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.

SECTION 4. Chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

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

1. "Board" means the public employees retirement system board.
2. "Deferred member" means a person who elected to receive deferred vested retirement benefits under chapter 54-52.
3. "Eligible employee" means a permanent state employee who is eighteen years or more of age and who is in a position not classified by the central personnel division.
4. "Employee" means any person employed by the state, whose compensation is paid out of state funds, or funds controlled or administered by the state or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means the state of North Dakota.
6. "Participating member" means an eligible employee who elects or is required to participate in the defined contribution retirement plan established under this chapter.

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

15 **54-52.6-02. Election.**

- 16 1. The board shall provide an opportunity for each eligible employee who is a
17 member of the public employees retirement system on December 31, 1999, to
18 elect in writing to terminate membership in the public employees retirement system
19 and elect to become a participating member under this chapter. Except as
20 provided in section 54-52.6-03, an election made by an eligible employee under
21 this section is irrevocable. The board shall accept written elections under this
22 section from eligible employees during the period beginning on the effective date of
23 this Act and ending 12:01 a.m. January 1, 2000. An eligible employee who does
24 not make a written election or who does not file the election during the period
25 specified in this section continues to be a member of the public employees
26 retirement system. An eligible employee who makes and files a written election
27 under this section ceases to be a member of the public employees retirement
28 system effective twelve midnight December 31, 1999; becomes a participating
29 member in the defined contribution retirement plan under this chapter effective
30 12:01 a.m. January 1, 2000; and waives all of that person's rights to a pension,
31 annuity, retirement allowance, insurance benefit, or any other benefit under the

1 public employees retirement system effective December 31, 1999. This section
2 does not affect a person's right to health benefits or retiree health benefits under
3 chapter 54-52.1. An eligible employee who is first employed and entered upon the
4 payroll of that person's employer after December 31, 1999, must be a participant in
5 the defined contribution retirement plan established under this chapter.

6 2. If an individual who is a deferred member of the public employees retirement
7 system on December 31, 1999, is reemployed and by virtue of that employment is
8 again eligible for membership in the public employees retirement system under
9 chapter 54-52, the individual may elect in writing to remain a member of the public
10 employees retirement system or if eligible to participate in the defined contribution
11 retirement plan established under this chapter to terminate membership in the
12 public employees retirement system and become a participating member in the
13 defined contribution retirement plan established under this chapter. An election
14 made by a deferred member under this section is irrevocable. The board shall
15 accept written elections under this section from a deferred member during the
16 period beginning on the date of the individual's reemployment and ending upon the
17 expiration of sixty days after the date of that reemployment. A deferred member
18 who makes and files a written election to remain a member of the public
19 employees retirement system retains all rights and is subject to all conditions as a
20 member of that retirement system. A deferred member who does not make a
21 written election or who does not file the election during the period specified in this
22 section continues to be a member of the public employees retirement system. A
23 deferred member who makes and files a written election to terminate membership
24 in the public employees retirement system ceases to be a member of the public
25 employees retirement system effective on the last day of the payroll period that
26 includes the date of the election; becomes a participating member in the defined
27 contribution retirement plan under this chapter effective the first day of the payroll
28 immediately following the date of the election; and waives all of that person's rights
29 to a pension, an annuity, a retirement allowance, insurance benefit, or any other
30 benefit under the public employees retirement system effective the last day of the
31 payroll that includes the date of the election. This section does not affect any right

1 to health benefits or retiree health benefits to which the deferred member may
2 otherwise be entitled.

- 3 3. After consultation with its actuary, the board shall determine the method by which a
4 participating member or deferred member may make a written election under this
5 section. If the participating member or deferred member is married at the time of
6 the election, the election is not effective unless the election is signed by the
7 individual's spouse. However, the board may waive this requirement if the
8 spouse's signature cannot be obtained because of extenuating circumstances.
9 4. If the board receives notification from the internal revenue service that this section
10 or any portion of this section will cause the public employees retirement system or
11 the retirement plan established under this chapter to be disqualified for tax
12 purposes under the internal revenue code, then the portion that will cause the
13 disqualification does not apply.

14 **54-52.6-03. Transfer of accumulated fund balances.** For an individual who elects to
15 terminate membership in the public employees retirement system under chapter 54-52, the
16 board shall transfer a lump sum amount from the retirement fund to the participating member's
17 account in the defined contribution retirement plan under this chapter before April 30, 2000.
18 However, if the individual terminates employment prior to receiving the lump sum transfer under
19 this section, the election made under section 54-52.6-02 is ineffective and the individual
20 remains a member of the public employees retirement system under chapter 54-52 and retains
21 all the rights and benefits provided under that chapter. The board shall calculate the amount to
22 be transferred based upon the actuarial present value of the individual's accumulated benefit
23 obligation under the public employees retirement system and the assumption that the individual
24 will retire under the earliest applicable normal retirement date. In calculating the actuarial
25 present value of an individual's accumulated benefit obligation, the board shall consider any
26 unfunded liability and apportion any unallocated assets between the transferee and the public
27 employees retirement system fund. The amount transferred must include interest from
28 January 1, 2000, to the date of the transfer, based upon eight percent annual interest,
29 compounded annually.

30 **54-52.6-04. Administration.** The board shall administer the defined contribution
31 retirement plan established under this chapter and the board or vendors contracted for by the

1 board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan.
2 The board has the exclusive authority and responsibility to employ or contract with personnel
3 and for services that the board determines necessary for the proper administration of and
4 investment of assets of the plan, including managerial, professional, legal, clerical, technical,
5 and administrative personnel or services.

6 **54-52.6-05. Direction of investments.** Each participating member shall direct the
7 investment of the individual's accumulated employer and employee contributions and earnings
8 to one or more investment choices within available categories of investment provided by the
9 board.

10 **54-52.6-06. Administrative expenses.** The administrative expenses of the plan must
11 be paid by the participating members who have not closed their accounts in a manner
12 determined by the board. The board or vendors contracted for by the board may charge
13 reasonable administrative expenses and deduct those expenses from a participating member's
14 account in the defined contribution retirement plan established under this chapter.

15 **54-52.6-07. Participation in other plans.** A participating member may not participate
16 in any other public sector retirement benefits plan for simultaneous service rendered to the
17 same public sector employer. However, this section does not prohibit a participating member
18 from participating in a retirement plan established by this state or other public sector employer
19 under the federal Internal Revenue Code.

20 **54-52.6-08. Credit of transfers.** The board shall promptly credit the plan account of a
21 participating member who makes an election under this chapter to terminate membership in the
22 public employees retirement system under chapter 54-52 with any amount transferred from the
23 public employees retirement system.

24 **54-52.6-09. Contributions - Penalty.**

- 25 1. Each participating member shall contribute monthly four percent of the monthly
26 salary or wage paid to the participant, and this assessment must be deducted from
27 the participant's salary in equal monthly installments commencing with the first
28 month of participation in the defined contribution retirement plan established under
29 this chapter.
- 30 2. The employer shall contribute an amount equal to four and twelve hundredths
31 percent of the monthly salary or wage of a participating member. If the employee's

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

9 3. Each employer, at its option, may pay the employee contributions required by this
10 section for all compensation earned after December 31, 1999. The amount paid
11 must be paid by the employer in lieu of contributions by the employee. If the
12 employer decides not to pay the contributions, the amount that would have been
13 paid will continue to be deducted from the employee's compensation. If
14 contributions are paid by the employer, they must be treated as employer
15 contributions in determining tax treatment under this code and the federal Internal
16 Revenue Code. Contributions paid by the employer may not be included as gross
17 income of the employee in determining tax treatment under this code and the
18 federal Internal Revenue Code until they are distributed or made available. The
19 employer shall pay these employee contributions from the same source of funds
20 used in paying compensation to the employee. The employer shall pay these
21 contributions by effecting an equal cash reduction in the gross salary of the
22 employee or by an offset against future salary increases or by a combination of a
23 reduction in gross salary and offset against future salary increases. Employee
24 contributions paid by the employer must be treated for the purposes of this chapter
25 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.
27 An employer shall exercise its option under this subsection by December 1, 1999,
28 and shall report its choice to the board in writing. The option chosen may not be
29 revoked for the remainder of the biennium. Thereafter, the option choice must be
30 forwarded to the board, in writing, by June fifteenth of each odd-numbered year.

1 **54-52.6-10. Vesting.** A participating member is immediately one hundred percent
2 vested in that member's contributions made to that member's account under this chapter. A
3 participating member vests in the employer contributions made on that member's behalf to an
4 account under this chapter according to the following schedule:

- 5 1. Upon completion of two years of service, fifty percent.
- 6 2. Upon completion of three years of service, seventy-five percent.
- 7 3. Upon completion of four years of service, one hundred percent.

8 A participating member who was a member or deferred member of the public employees
9 retirement system under chapter 54-52 who makes an election to participate in the defined
10 contribution retirement plan pursuant to this chapter, must be credited with the years of service
11 accrued under the public employees retirement system on the effective date of participation in
12 the defined contribution retirement plan for the purpose of meeting vesting requirements for
13 benefits under this section. Any forfeiture as a result of the failure of a participating member to
14 vest in the employer contribution must be deposited in the public employees retirement fund.

15 **54-52.6-11. Refund beneficiaries.** A participating or former participating member may
16 nominate one or more individuals as a refund beneficiary by filing written notice of nomination
17 with the board. If the participating member or former participating member is married at the
18 time of the nomination and the participant's spouse is not the refund beneficiary for one
19 hundred percent of the account, the nomination is not effective unless the nomination is signed
20 by the participant's spouse. However, the board may waive this requirement if the spouse's
21 signature cannot be obtained because of extenuating circumstances.

22 **54-52.6-12. Qualified domestic relations orders.**

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

1 the board shall notify the participating member, the named alternate payee, and
2 the vendor, if applicable, of its receipt of the qualified domestic relations order.

3 2. A "qualified domestic relations order" for purposes of this section means any
4 judgment, decree, or order, including approval of a property settlement agreement,
5 which relates to the provision of child support, spousal support, or marital property
6 rights to a spouse, former spouse, child, or other dependent of a participating
7 member, is made pursuant to a North Dakota domestic relations law, which creates
8 or recognizes the existence of an alternate payee's right to, or assigns to an
9 alternate payee the right to, receive all or a part of a participating member's
10 account in the defined contribution retirement plan under this chapter. A qualified
11 domestic relations order may not require the board to provide any type or form of
12 benefit, or any option, not otherwise allowed under this chapter. However, a
13 qualified domestic relations order may require distribution from an account in the
14 defined contribution retirement plan under this chapter notwithstanding that the
15 participating member has not terminated eligible employment. A qualified domestic
16 relations order must specify:

- 17 a. The name and last known mailing address of the participating member and
18 the name of the mailing address of each alternate payee covered by the
19 order;
20 b. The amount or percentage of the participating member's account to be paid to
21 each alternate payee;
22 c. The number of payments or period to which the order applies; and
23 d. Each retirement plan to which the order applies.

24 **54-52.6-13. Distributions.**

- 25 1. A participating member is eligible to receive distribution of that person's
26 accumulated balance in the plan upon becoming a former participating member.
27 2. Upon the death of a participating member or former participating member, the
28 accumulated balance of that deceased participant is considered to belong to the
29 refund beneficiary, if any, of that deceased participant. If a valid nomination of
30 refund beneficiary is not on file with the board, the board, in a lump sum
31 distribution, shall distribute the accumulated balance to a legal representative, if

any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

3. A deferred member or refund beneficiary may elect one or a combination of several of the following methods of distribution of the accumulated balance:

a. A lump sum distribution to the recipient.

b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

c. Periodic distributions, as authorized by the board.

d. No current distribution, in which case the accumulated balance must remain in the plan until the deferred member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

54-52.6-14. Disability benefits. The board shall provide a procedure whereby a participating member may use a portion of that person's account contributions under this chapter to purchase disability insurance.

54-52.6-15. Board to provide information. The board shall provide information to employees who are eligible to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this section.

54-52.6-16. State income tax deductions. For the purposes of state income tax, the assessment imposed by this chapter on the employee must be treated in accordance with existing state statutes on state income tax.

54-52.6-17. Exemption from state premium tax. Premiums, consideration for annuities, and membership fees are exempt from premium taxes payable pursuant to section 26.1-03-17.

1 **54-52.6-18. Savings clause.** If the board determines that any section of this chapter
2 does not comply with applicable federal statutes or rules, the board shall adopt appropriate
3 terminology with respect to that section as will comply with those federal statutes or rules. Any
4 plan modifications made by the board pursuant to this section are effective until the effective
5 date of any measure enacted by the legislative assembly providing the necessary amendments
6 to this chapter to ensure compliance with the federal statutes or rules.

7 **54-52.6-19. Overpayments.** The board has the right of setoff to recover overpayments
8 made under this chapter and to satisfy any claims arising from embezzlement or fraud
9 committed by a participating member, deferred member, refund beneficiary, or other person
10 who has a claim to a distribution or any other benefit from a plan governed by this chapter.

11 **54-52.6-20. Correction of records.** The board shall correct errors in the records and
12 actions in plans under this chapter and shall seek to recover overpayments and shall make up
13 underpayments.

14 **SECTION 5. REPEAL.** Section 54-52-02.5 of the North Dakota Century Code is
15 repealed.

16 **SECTION 6. APPROPRIATION.** There is hereby appropriated out of any moneys in
17 the general fund in the state treasury, not otherwise appropriated, the sum of
18 _____, or so much of the sum as may be necessary, to the public employees
19 retirement system board for the purpose of administering this Act, for the biennium beginning
20 July 1, 1999, and ending June 30, 2001.

21 **SECTION 7. EFFECTIVE DATE.** Section 5 becomes effective on January 1, 2000.

NOTE: This bill draft contains a blank that must be completed before introduction.