

**HOUSE BILL NO. 1257**

Introduced by

Representatives Wald, Grande, Klein

Senators Grindberg, Krebsbach, Wardner

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 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

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

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

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

16 **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise  
17 requires:

- 18 1. "Board" means the public employees retirement system board.
- 19 2. "Deferred member" means a person who elected to receive deferred vested  
20 retirement benefits under chapter 54-52.
- 21 3. "Eligible employee" means a permanent state employee who is eighteen years or  
22 more of age and who is in a position not classified by the central personnel  
23 division.
- 24 4. "Employee" means any person employed by the state, whose compensation is  
25 paid out of state funds, or funds controlled or administered by the state or paid by  
26 the federal government through any of its executive or administrative officials.
- 27 5. "Employer" means the state of North Dakota.
- 28 6. "Participating member" means an eligible employee who elects or is required to  
29 participate in the defined contribution retirement plan established under this  
30 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

- 1           any, of the deceased participant or, if there is no legal representative, to the  
2           deceased participant's estate.
- 3           3. A deferred member or refund beneficiary may elect one or a combination of several  
4           of the following methods of distribution of the accumulated balance:
- 5           a. A lump sum distribution to the recipient.  
6           b. A lump sum direct rollover to another qualified plan, to the extent allowed by  
7           federal law.  
8           c. Periodic distributions, as authorized by the board.  
9           d. No current distribution, in which case the accumulated balance must remain in  
10           the plan until the deferred member or refund beneficiary elects a method or  
11           methods of distribution under this section, to the extent allowed by federal  
12           law.

13           **54-52.6-14. Disability benefits.** The board shall provide a procedure whereby a  
14 participating member may use a portion of that person's account contributions under this  
15 chapter to purchase disability insurance.

16           **54-52.6-15. Board to provide information.** The board shall provide information to  
17 employees who are eligible to elect to become participating members under this chapter. The  
18 information must include at a minimum the employee's current account balance, the  
19 assumption of investment risk under a defined contribution retirement plan, administrative and  
20 investment costs, coordination of benefits information, and a comparison of projected retirement  
21 benefits under the public employees retirement system under chapter 54-52 and the retirement  
22 plan established under this chapter. Notwithstanding any other provision of law, the board is  
23 not liable for any election or investment decision made by an employee based upon information  
24 provided to an employee under this chapter.

25           **54-52.6-16. State income tax deductions.** For the purposes of state income tax, the  
26 assessment imposed by this chapter on the employee must be treated in accordance with  
27 existing state statutes on state income tax.

28           **54-52.6-17. Exemption from state premium tax.** Premiums, consideration for  
29 annuities, and membership fees are exempt from premium taxes payable pursuant to section  
30 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. EFFECTIVE DATE.** Section 5 becomes effective on January 1, 2000.