

**HOUSE BILL NO. 1217**

Introduced by

Representatives Wald, Grande

Senators Krebsbach, Wardner

1 A BILL for an Act to amend and reenact subsection 3 of section 54-52-01 and sections  
2 54-52.6-01, 54-52.6-02, and 54-52.6-03 of the North Dakota Century Code, relating to eligibility  
3 to participate in the defined contribution retirement plan.

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

5 **SECTION 1. AMENDMENT.** Subsection 3 of section 54-52-01 of the 1999 Supplement  
6 to the North Dakota Century Code is amended and reenacted as follows:

7 3. "Eligible employee" means all permanent employees who meet all of the eligibility  
8 requirements set by this chapter and who are eighteen years or more of age, and  
9 includes appointive and elective officials who elect to remain members of the  
10 retirement system; provided, that judges of the supreme and district courts eligible  
11 under section 54-52-02.3 and appointed officials who elect to participate under  
12 section 54-52-02.5 are eligible employees and shall participate in the public  
13 employees retirement system. Eligible employee does not include ~~nonclassified~~  
14 state employees who elect to become members of the retirement plan established  
15 under chapter 54-52.6 ~~but does include employees of the judicial branch and~~  
16 ~~employees of the board of higher education and state institutions under the~~  
17 ~~jurisdiction of the board.~~

18 **SECTION 2. AMENDMENT.** Section 54-52.6-01 of the 1999 Supplement to the North  
19 Dakota Century Code is amended and reenacted as follows:

20 **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise  
21 requires:

- 22 1. "Board" means the public employees retirement system board.  
23 2. "Deferred member" means a person who elected to receive deferred vested  
24 retirement benefits under chapter 54-52.

- 1           3. "Eligible employee" means a permanent state employee, except a supreme or  
2           district court judge under the public employees retirement system or an employee  
3           of the ~~judicial branch or an employee of the~~ board of higher education and state  
4           institutions under the jurisdiction of the board who is eligible to participate in an  
5           alternative retirement program established under subsection 13 of section  
6           15-10-17, who is eighteen years or more of age ~~and who is in a position not~~  
7           ~~classified by the central personnel division.~~
- 8           4. "Employee" means any person employed by the state, whose compensation is  
9           paid out of state funds, or funds controlled or administered by the state or paid by  
10          the federal government through any of its executive or administrative officials.
- 11          5. "Employer" means the state of North Dakota.
- 12          6. "Participating member" means an eligible employee who elects to participate in the  
13          defined contribution retirement plan established under this chapter.
- 14          7. "Permanent employee" means a state employee whose services are not limited in  
15          duration and who is filling an approved and regularly funded position and is  
16          employed twenty hours or more per week and at least five months each year.
- 17          8. "Wages" and "salaries" means earnings in eligible employment under this chapter  
18          reported as salary on a federal income tax withholding statement plus any salary  
19          reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h),  
20          or 457. "Salary" does not include fringe benefits such as payments for unused sick  
21          leave, personal leave, vacation leave paid in a lump sum, overtime, housing  
22          allowances, transportation expenses, early retirement, incentive pay, severance  
23          pay, medical insurance, workers' compensation benefits, disability insurance  
24          premiums or benefits, or salary received by a member in lieu of previously  
25          employer-provided fringe benefits under an agreement between an employee and  
26          a participating employer. Bonuses may be considered as salary under this section  
27          if reported and annualized pursuant to rules adopted by the board.

28           **SECTION 3. AMENDMENT.** Section 54-52.6-02 of the 1999 Supplement to the North  
29   Dakota Century Code is amended and reenacted as follows:

30           **54-52.6-02. Election.**

- 1           1.    The board shall provide an opportunity for each eligible employee who is a  
2                    member of the public employees retirement system on ~~December 31, 1999~~  
3                    September 30, 2002, to elect in writing to terminate membership in the public  
4                    employees retirement system and elect to become a participating member under  
5                    this chapter. Except as provided in section 54-52.6-03, an election made by an  
6                    eligible employee under this section is irrevocable. The board shall accept written  
7                    elections under this section from eligible employees during the period beginning on  
8                    the effective date of this Act and ending 12:01 a.m. ~~January 1, 2000~~ December 13,  
9                    2002. An eligible employee who does not make a written election or who does not  
10                   file the election during the period specified in this section continues to be a  
11                   member of the public employees retirement system. An eligible employee who  
12                   makes and files a written election under this section ceases to be a member of the  
13                   public employees retirement system effective twelve midnight December 31, ~~1999~~  
14                   2002; becomes a participating member in the defined contribution retirement plan  
15                   under this chapter effective 12:01 a.m. January 1, ~~2000~~ 2003; and waives all of  
16                   that person's rights to a pension, annuity, retirement allowance, insurance benefit,  
17                   or any other benefit under the public employees retirement system effective  
18                   December 31, ~~1999~~ 2002. This section does not affect a person's right to health  
19                   benefits or retiree health benefits under chapter 54-52.1. An eligible employee  
20                   who is first employed and entered upon the payroll of that person's employer after  
21                   ~~December 31, 1999~~ September 30, 2002, may make an election at any time during  
22                   the first six months after the date of employment to participate in the defined  
23                   contribution retirement plan established under this chapter.
- 24           2.    If an individual who is a deferred member of the public employees retirement  
25                   system on ~~December 31, 1999~~ September 30, 2002, is reemployed and by virtue  
26                   of that employment is again eligible for membership in the public employees  
27                   retirement system under chapter 54-52, the individual may elect in writing to  
28                   remain a member of the public employees retirement system or if eligible to  
29                   participate in the defined contribution retirement plan established under this  
30                   chapter to terminate membership in the public employees retirement system and  
31                   become a participating member in the defined contribution retirement plan

- 1 established under this chapter. An election made by a deferred member under this  
2 section is irrevocable. The board shall accept written elections under this section  
3 from a deferred member during the period beginning on the date of the individual's  
4 reemployment and ending upon the expiration of sixty days after the date of that  
5 reemployment. A deferred member who makes and files a written election to  
6 remain a member of the public employees retirement system retains all rights and  
7 is subject to all conditions as a member of that retirement system. A deferred  
8 member who does not make a written election or who does not file the election  
9 during the period specified in this section continues to be a member of the public  
10 employees retirement system. A deferred member who makes and files a written  
11 election to terminate membership in the public employees retirement system  
12 ceases to be a member of the public employees retirement system effective on the  
13 last day of the payroll period that includes the date of the election; becomes a  
14 participating member in the defined contribution retirement plan under this chapter  
15 effective the first day of the payroll immediately following the date of the election;  
16 and waives all of that person's rights to a pension, an annuity, a retirement  
17 allowance, insurance benefit, or any other benefit under the public employees  
18 retirement system effective the last day of the payroll that includes the date of the  
19 election. This section does not affect any right to health benefits or retiree health  
20 benefits to which the deferred member may otherwise be entitled.
- 21 ~~3. An employee who elects to participate in the retirement plan established under this~~  
22 ~~chapter must remain a participant even if that employee returns to the classified~~  
23 ~~service.~~
- 24 4. After consultation with its actuary, the board shall determine the method by which a  
25 participating member or deferred member may make a written election under this  
26 section. If the participating member or deferred member is married at the time of  
27 the election, the election is not effective unless the election is signed by the  
28 individual's spouse. However, the board may waive this requirement if the  
29 spouse's signature cannot be obtained because of extenuating circumstances.
- 30 ~~5.~~ 4. If the board receives notification from the internal revenue service that this section  
31 or any portion of this section will cause the public employees retirement system or

1           the retirement plan established under this chapter to be disqualified for tax  
2           purposes under the Internal Revenue Code, then the portion that will cause the  
3           disqualification does not apply.

4           **SECTION 4. AMENDMENT.** Section 54-52.6-03 of the 1999 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6           **54-52.6-03. Transfer of accumulated fund balances.** For an individual who elects to  
7 terminate membership in the public employees retirement system under chapter 54-52, the  
8 board shall transfer a lump sum amount from the retirement fund to the participating member's  
9 account in the defined contribution retirement plan under this chapter. However, if the  
10 individual terminates employment prior to receiving the lump sum transfer under this section,  
11 the election made under section 54-52.6-02 is ineffective and the individual remains a member  
12 of the public employees retirement system under chapter 54-52 and retains all the rights and  
13 benefits provided under that chapter. The board shall calculate the amount to be transferred for  
14 ~~employees electing to transfer prior to January 1, 2000~~ persons employed before October 1,  
15 2002, using the two following formulas, and shall transfer the greater of the two amounts  
16 obtained:

- 17           1. The actuarial present value of the individual's accumulated benefit obligation under  
18           the public employees retirement system based on the assumption that the  
19           individual will retire under the earliest applicable normal retirement age, plus  
20           interest from January 1, ~~2000~~ 2003, to the date of transfer, at the rate of one-half of  
21           one percent less than the actuarial interest assumption at the time of the election;  
22           or
- 23           2. The actual employer and employee contributions made pursuant to sections  
24           54-52-05 and 54-52-06, plus interest at the rate of one-half of one percent less  
25           than the actuarial interest assumption at the time of the election.

26 The board shall calculate the amount to be transferred for persons employed after  
27 ~~December 31, 1999~~ September 30, 2002, using only the formula contained in subsection 2.