

**HOUSE BILL NO. 1100**

Introduced by

Government and Veterans Affairs Committee

(At the request of the Public Employees Retirement System)

1 A BILL for an Act to create and enact a new section to chapter 54-52.6 of the North Dakota  
2 Century Code, relating to the acceptance of rollover contributions under the defined contribution  
3 retirement plan; and to amend and reenact sections 54-52.6-02, 54-52.6-03, 54-52.6-13, and  
4 54-52.6-14 of the North Dakota Century Code, relating to participation, calculation of interest on  
5 transferred amounts, distribution options, and disability benefits under the defined contribution  
6 retirement plan.

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

8 **SECTION 1. AMENDMENT.** Section 54-52.6-02 of the 1999 Supplement to the North  
9 Dakota Century Code is amended and reenacted as follows:

10 **54-52.6-02. Election.**

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

1           12:01 a.m. January 1, 2000; and waives all of that person's rights to a pension,  
2           annuity, retirement allowance, insurance benefit, or any other benefit under the  
3           public employees retirement system effective December 31, 1999. This section  
4           does not affect a person's right to health benefits or retiree health benefits under  
5           chapter 54-52.1. An eligible employee who is first employed and entered upon the  
6           payroll of that person's employer after December 31, 1999, may make an election  
7           to participate in the defined contribution retirement plan established under this  
8           chapter at any time during the first six months after the date of employment ~~to~~  
9           ~~participate in the defined contribution retirement plan established under this~~  
10          ~~chapter.~~ If the board, in its sole discretion, determines that the employee was not  
11          adequately notified of the employee's option to participate in the defined  
12          contribution retirement plan, the board may provide the employee a reasonable  
13          time within which to make that election, which may extend beyond the original  
14          six-month decision window.

15          2. If an individual who is a deferred member of the public employees retirement  
16          system on December 31, 1999, is reemployed and by virtue of that employment is  
17          again eligible for membership in the public employees retirement system under  
18          chapter 54-52, the individual may elect in writing to remain a member of the public  
19          employees retirement system or if eligible to participate in the defined contribution  
20          retirement plan established under this chapter to terminate membership in the  
21          public employees retirement system and become a participating member in the  
22          defined contribution retirement plan established under this chapter. An election  
23          made by a deferred member under this section is irrevocable. The board shall  
24          accept written elections under this section from a deferred member during the  
25          period beginning on the date of the individual's reemployment and ending upon the  
26          expiration of ~~sixty days~~ six months after the date of that reemployment. If the  
27          board, in its sole discretion, determines that the employee was not adequately  
28          notified of the employee's option to participate in the defined contribution  
29          retirement plan, the board may provide the employee a reasonable time within  
30          which to make that election, which may extend beyond the original six-month  
31          decision window. A deferred member who makes and files a written election to

1 remain a member of the public employees retirement system retains all rights and  
2 is subject to all conditions as a member of that retirement system. A deferred  
3 member who does not make a written election or who does not file the election  
4 during the period specified in this section continues to be a member of the public  
5 employees retirement system. A deferred member who makes and files a written  
6 election to terminate membership in the public employees retirement system  
7 ceases to be a member of the public employees retirement system effective on the  
8 last day of the payroll period that includes the date of the election; becomes a  
9 participating member in the defined contribution retirement plan under this chapter  
10 effective the first day of the payroll immediately following the date of the election;  
11 and waives all of that person's rights to a pension, an annuity, a retirement  
12 allowance, insurance benefit, or any other benefit under the public employees  
13 retirement system effective the last day of the payroll that includes the date of the  
14 election. This section does not affect any right to health benefits or retiree health  
15 benefits to which the deferred member may otherwise be entitled.

16 3. An eligible employee who elects to participate in the retirement plan established  
17 under this chapter must remain a participant even if that employee returns to the  
18 classified service or becomes employed by a political subdivision that participates  
19 in the public employees retirement system. The contribution amount must be as  
20 provided in this chapter, regardless of the position in which the employee is  
21 employed. Notwithstanding the irrevocability provisions of this chapter, if a  
22 member who elects to participate in the retirement plan established under this  
23 chapter becomes a supreme or district court judge, becomes an employee of the  
24 highway patrol, becomes employed in a position subject to teachers' fund for  
25 retirement membership, or becomes an employee of the board of higher education  
26 or state institution under the jurisdiction of the board who is eligible to participate in  
27 an alternative retirement program established under subsection 13 of section  
28 15-10-17, the member's status as a member of the defined contribution retirement  
29 plan is suspended, and the member becomes a new member of the retirement  
30 plan for which that member's new position is eligible. The member's account  
31 balance remains in the defined contribution retirement plan, but no new

1           contributions may be made to that account. The member's service credit and  
2           salary history that were forfeited as a result of the member's transfer to the defined  
3           contribution retirement plan remain forfeited, and service credit accumulation in the  
4           new retirement plan begins from the first day of employment in the new position. If  
5           the member later returns to employment that is eligible for the defined contribution  
6           plan, the member's suspension must be terminated, the member again becomes a  
7           member of the defined contribution retirement plan, and the member's account  
8           resumes accepting contributions. At the member's option, and pursuant to rules  
9           adopted by the board, the member may transfer any available balance as  
10           determined by the provisions of the alternate retirement plan into the member's  
11           account under this chapter.

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

23           **SECTION 2. AMENDMENT.** Section 54-52.6-03 of the 1999 Supplement to the North  
24           Dakota Century Code is amended and reenacted as follows:

25           **54-52.6-03. Transfer of accumulated fund balances.** For an individual who elects to  
26           terminate membership in the public employees retirement system under chapter 54-52, the  
27           board shall transfer a lump sum amount from the retirement fund to the participating member's  
28           account in the defined contribution retirement plan under this chapter. However, if the  
29           individual terminates employment prior to receiving the lump sum transfer under this section,  
30           the election made under section 54-52.6-02 is ineffective and the individual remains a member  
31           of the public employees retirement system under chapter 54-52 and retains all the rights and

1 benefits provided under that chapter. The board shall calculate the amount to be transferred for  
2 employees electing to transfer prior to January 1, 2000, using the two following formulas, and  
3 shall transfer the greater of the two amounts obtained:

- 4 1. The actuarial present value of the individual's accumulated benefit obligation under  
5 the public employees retirement system based on the assumption that the  
6 individual will retire under the earliest applicable normal retirement age, plus  
7 interest from January 1, 2000, to the date of transfer, at the rate of one-half of one  
8 percent less than the actuarial interest assumption at the time of the election; or
- 9 2. The actual employer ~~and employee contributions~~ contribution made ~~pursuant to~~  
10 ~~sections 54-52-05 and 54-52-06,~~ less vested employer contributions made  
11 pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of  
12 one percent less than the actuarial interest assumption at the time of the election  
13 plus the employee account balance.

14 The board shall calculate the amount to be transferred for persons employed after  
15 December 31, 1999, using only the formula contained in subsection 2.

16 **SECTION 3.** A new section to chapter 54-52.6 of the North Dakota Century Code is  
17 created and enacted as follows:

18 **Acceptance of rollovers.** The plan may allow a participating member to transfer or  
19 rollover funds from other qualified plans into the member's account under rules adopted by the  
20 board.

21 **SECTION 4. AMENDMENT.** Section 54-52.6-13 of the 1999 Supplement to the North  
22 Dakota Century Code is amended and reenacted as follows:

23 **54-52.6-13. Distributions.**

- 24 1. A participating member is eligible to receive distribution of that person's  
25 accumulated balance in the plan upon becoming a former participating member.
- 26 2. Upon the death of a participating member or former participating member, the  
27 accumulated balance of that deceased participant is considered to belong to the  
28 refund beneficiary, if any, of that deceased participant. If a valid nomination of  
29 refund beneficiary is not on file with the board, the board, in a lump sum  
30 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~~ former participating member or refund beneficiary may elect one or a  
4 combination of several of the following methods of distribution of the accumulated  
5 balance:
- 6 a. A lump sum distribution to the recipient.
- 7 b. A lump sum direct rollover to another qualified plan, to the extent allowed by  
8 federal law.
- 9 c. Periodic distributions, as authorized by the board.
- 10 d. No current distribution, in which case the accumulated balance must remain in  
11 the plan until the ~~deferred~~ former participating member or refund beneficiary  
12 elects a method or methods of distribution under this section, to the extent  
13 allowed by federal law.
- 14 4. If the former participating member's vested account balance is less than five  
15 thousand dollars, the board shall automatically refund the member's vested  
16 account balance upon termination of employment. The member may waive the  
17 refund if the member submits a written statement to the board, within thirty days  
18 after termination, requesting that the member's vested account balance remain in  
19 the plan.

20 **SECTION 5. AMENDMENT.** Section 54-52.6-14 of the 1999 Supplement to the North  
21 Dakota Century Code is amended and reenacted as follows:

22 **54-52.6-14. Disability benefits.** The board shall ~~provide a procedure whereby a~~  
23 ~~participating member may use a portion of that person's account contributions under this~~  
24 ~~chapter to purchase disability insurance~~ allow distribution of the participating member's vested  
25 account balance if the board determines that the participating member has become totally and  
26 permanently disabled. If approved, the disabled member has the same distribution options as  
27 provided in subdivisions a and c of subsection 3 of section 54-52.6-13. However, if the member  
28 chooses the periodic distribution option, the member may only receive distributions for as long  
29 as the disability continues and the member submits the necessary documentation and  
30 undergoes medical testing required by the board, or for as long as the member participates in a

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- 1 rehabilitation program required by the board, or both. If the board determines that a member no
- 2 longer meets the eligibility definition, the board shall discontinue the disability retirement benefit.