

Introduced by

1 A BILL for an Act to create and enact two new subsections of section 54-52-01, a new section  
2 of chapter 54-52, and two new sections of chapter 54-52.6 of the North Dakota Century Code,  
3 relating to participation by peace officers and correctional officers in the defined benefit  
4 retirement plan and the defined contribution retirement plan; and to amend and reenact  
5 subsection 3 of section 54-52-01, section 54-52-02.1, subsection 3 of section 54-52-05,  
6 subsection 3 of section 54-52-17, section 54-52.6-01, subsection 1 of section 54-52.6-02, and  
7 section 54-52.6-03 of the North Dakota Century Code, relating to participation by peace officers  
8 and correctional officers in the defined benefit retirement plan and the defined contribution  
9 retirement plan.

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

11 **SECTION 1.** Two new subsections of section 54-52-01 of the North Dakota Century  
12 Code are created and enacted as follows:

13 "Correctional officer" means a participating member who is certified by the  
14 department of corrections and rehabilitation or the peace officer standards and  
15 training board as a correctional officer and is employed by the department of  
16 corrections and rehabilitation or a political subdivision as a correctional officer.

17 "Peace officer" means a participating member who is a peace officer as defined in  
18 section 12-63-01 and is employed as a peace officer.

19 **SECTION 2. AMENDMENT.** Subsection 3 of section 54-52-01 of the North Dakota  
20 Century Code is amended and reenacted as follows:

21 3. "Eligible employee" means all permanent employees who meet all of the eligibility  
22 requirements set by this chapter and who are eighteen years or more of age, and  
23 includes appointive and elective officials who elect to remain members of the

1 retirement system; provided, that judges of the supreme and district courts eligible  
2 under section 54-52-02.3 and appointed officials who elect to participate under  
3 section 54-52-02.5 are eligible employees and shall participate in the public  
4 employees retirement system. Eligible employee does not include nonclassified  
5 state employees, peace officers, and correctional officers who elect to become  
6 members of the retirement plan established under chapter 54-52.6 but does  
7 include employees of the judicial branch and employees of the board of higher  
8 education and state institutions under the jurisdiction of the board.

9 **SECTION 3. AMENDMENT.** Section 54-52-02.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **54-52-02.1. Political subdivisions authorized to join public employees retirement**  
12 **system.**

- 13 1. A political subdivision may, on behalf of its permanent employees, on behalf of its  
14 peace officers and correctional officers separately from its other employees, and  
15 permanent noncertified employees only in the case of school districts, enter into  
16 agreements with the retirement board for the purpose of extending the benefits of  
17 the public employees retirement system, as provided in this chapter, to those  
18 employees. The agreement may, in accordance with this chapter, contain  
19 provisions relating to benefits, contributions, effective date, modification,  
20 administration, and other appropriate provisions as the retirement board and the  
21 political subdivision agree upon, but the agreement must provide that:
- 22 a. The political subdivision will contribute on behalf of each eligible employee an  
23 amount equal to that provided in section 54-52-06 or section 5 of this Act for  
24 peace officers and correctional officers participating separately from other  
25 political subdivision employees.
- 26 b. A portion of the moneys paid by the political subdivision may be used to pay  
27 administrative expenses of the retirement board.
- 28 2. Notwithstanding any other provision of law, a political subdivision having an  
29 existing police pension plan may merge that plan into the public employees  
30 retirement system under rules adopted by and in a manner determined by the  
31 board.

1           3. Notwithstanding any other provision of this chapter, ~~no~~ a political subdivision of this  
2           state not participating in the public employees retirement system on June 30, 1977,  
3           may not thereafter become a participant in the retirement system until an actuarial  
4           study is performed under the direction of the board to calculate the cost of that  
5           portion of benefits to be paid by the retirement system to the employees of the  
6           political subdivision based on any prior service or on any service after June 30,  
7           1977, and before the date of initial participation in the retirement system, or both;  
8           and the political subdivision has adopted a method, approved by the board, to pay  
9           the costs determined in this subsection over a period not to exceed twenty-five  
10          years from June 30, 1977. ~~No~~ A political subdivision may not discontinue  
11          participation in the fund without first making such payment to the fund as may be  
12          necessary for the fund to pay the future benefits of the eligible employees of the  
13          political subdivision as determined on the basis of rules adopted by the board.

14           **SECTION 4. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota  
15          Century Code is amended and reenacted as follows:

16           3. Each employer, at its option, may pay the employee contributions required by  
17           subsection 2 and sections 54-52-06.1 ~~and~~, 54-52-06.2, and section 5 of this Act.  
18           The amount paid must be paid by the employer in lieu of contributions by the  
19           employee. If the state determines not to pay the contributions, the amount that  
20           would have been paid must continue to be deducted from the employee's  
21           compensation. If contributions are paid by the employer, they must be treated as  
22           employer contributions in determining tax treatment under this code and the federal  
23           Internal Revenue Code. If contributions are paid by the employer, they may not be  
24           included as gross income of the employee in determining tax treatment under this  
25           code and the Internal Revenue Code until they are distributed or made available.  
26           The employer shall pay these employee contributions from the same source of  
27           funds used in paying compensation to the employee or from the levy authorized by  
28           subsection 5 of section 57-15-28.1. The employer shall pay these contributions by  
29           effecting an equal cash reduction in the gross salary of the employee or by an  
30           offset against future salary increases or by a contribution of a reduction in gross  
31           salary and offset against future salary increases. If employee contributions are

1           paid by the employer, they must be treated for the purposes of this chapter in the  
2           same manner and to the same extent as employee contributions made prior to the  
3           date on which employee contributions were assumed by the employer. An  
4           employer exercising its option under this subsection shall report its choice to the  
5           board, in writing, by June fifteenth of each odd-numbered year.

6           **SECTION 5.** A new section of chapter 54-52 of the North Dakota Century Code is  
7           created and enacted as follows:

8           **Contribution by peace officers and correctional officers - Employer contribution.**

9           Each peace officer or correctional officer who is a member of the public employees retirement  
10          system is assessed and shall pay monthly four percent of the employee's monthly salary. The  
11          assessment must be deducted and retained out of the employee's salary in equal monthly  
12          installments. The peace officer's or correctional officer's employer shall contribute an amount  
13          determined by the board to be actuarially required to support the level of benefits specified in  
14          section 54-52-17. The employer's contribution must be paid from funds appropriated for salary  
15          or from any other funds available for such purposes. If the peace officer's or correctional  
16          officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the  
17          employer shall contribute, in addition, an amount equal to the required peace officer's or  
18          correctional officer's assessment.

19          **SECTION 6. AMENDMENT.** Subsection 3 of section 54-52-17 of the North Dakota  
20          Century Code is amended and reenacted as follows:

21          3. Retirement dates are defined as follows:

22               a. Normal retirement date, except for a national guard security officer or  
23               firefighter or a peace officer or correctional officer, is:

24                       (1) The first day of the month next following the month in which the  
25                       member attains the age of sixty-five years; or

26                       (2) When the member has a combined total of years of service credit and  
27                       years of age equal to eighty-five and has not received a retirement  
28                       benefit under this chapter.

29               b. Normal retirement date for a national guard security officer or firefighter is the  
30               first day of the month next following the month in which the national guard  
31               security officer or firefighter attains the age of fifty-five years and has

- 1 completed at least three consecutive years of employment as a national guard  
2 security officer or firefighter immediately preceding retirement.
- 3 c. Normal retirement date for a peace officer or correctional officer is the first  
4 day of the month next following the month in which the peace officer or  
5 correctional officer attains the age of fifty-five years and has completed at  
6 least three consecutive years of employment as a peace officer or correctional  
7 officer immediately preceding retirement.
- 8 d. Postponed retirement date is the first day of the month next following the  
9 month in which the member, on or after July 1, 1977, actually severs or has  
10 severed the member's employment after reaching the normal retirement date.
- 11 e. Early retirement date, except for a national guard security officer or firefighter  
12 or a peace officer or correctional officer, is the first day of the month next  
13 following the month in which the member attains the age of fifty-five years and  
14 has completed three years of eligible employment. For a national guard  
15 security officer or firefighter, early retirement date is the first day of the month  
16 next following the month in which the national guard security officer or  
17 firefighter attains the age of fifty years and has completed at least three years  
18 of eligible employment. For a peace officer or correctional officer, early  
19 retirement date is the first day of the month next following the month in which  
20 the peace officer or correctional officer attains the age of fifty years and has  
21 completed at least three years of eligible employment.
- 22 e. f. Disability retirement date is the first day of the month after a member  
23 becomes permanently and totally disabled, according to medical evidence  
24 called for under the rules of the board, and has completed at least one  
25 hundred eighty days of eligible employment. For supreme and district court  
26 judges, permanent and total disability is based solely on a judge's inability to  
27 perform judicial duties arising out of physical or mental impairment, as  
28 determined pursuant to rules adopted by the board or as provided by  
29 subdivision a of subsection 3 of section 27-23-03. A member is eligible to  
30 receive disability retirement benefits only if the member:
- 31 (1) Became disabled during the period of eligible employment; and

1                   (2) Applies for disability retirement benefits within twelve months of the  
2                   date the member terminates employment.

3                   A member is eligible to continue to receive disability benefits as long as the  
4                   permanent and total disability continues and the member submits the  
5                   necessary documentation and undergoes medical testing required by the  
6                   board, or for as long as the member participates in a rehabilitation program  
7                   required by the board, or both. If the board determines that a member no  
8                   longer meets the eligibility definition, the board may discontinue the disability  
9                   retirement benefit. The board may pay the cost of any medical testing or  
10                  rehabilitation services it deems necessary and these payments are  
11                  appropriated from the retirement fund for those purposes.

12                  **SECTION 7. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14                  **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise  
15 requires:

- 16                  1. "Board" means the public employees retirement system board.
- 17                  2. "Correctional officer" means a participating member who is certified by the  
18 department of corrections and rehabilitation or the peace officer standards and  
19 training board as a correctional officer and is employed by the department of  
20 corrections and rehabilitation or a political subdivision as a correctional officer.
- 21                  3. "Deferred member" means a person who elected to receive deferred vested  
22 retirement benefits under chapter 54-52.
- 23                  ~~3.~~ 4. "Eligible employee" means a permanent state employee, except an employee of  
24 the judicial branch or an employee of the board of higher education and state  
25 institutions under the jurisdiction of the board, who is eighteen years or more of  
26 age and who is in a position not classified by the central personnel division. The  
27 term also means a peace officer or correctional officer employed by the state of  
28 North Dakota who elects to become a participating member and a peace officer  
29 and correctional officer employed by a political subdivision that elects to participate  
30 on behalf of its peace officers and correctional officers separately from its other

1           employees in the defined contribution retirement plan established under this  
2           chapter.

3       4. 5. "Employee" means any person employed by the state, whose compensation is  
4           paid out of state funds, or funds controlled or administered by the state or paid by  
5           the federal government through any of its executive or administrative officials. The  
6           term also means a peace officer and correctional officer employed by a political  
7           subdivision that elects to participate in the defined contribution retirement plan  
8           established under this chapter.

9       5. 6. "Employer" means the state of North Dakota and a political subdivision that elects  
10          to participate on behalf of its peace officer and correctional officer employees.

11       6. 7. "Participating member" means an eligible employee who elects to participate in the  
12          defined contribution retirement plan established under this chapter.

13       8. "Peace officer" means a participating member who is a peace officer as defined by  
14          section 12-63-01 and is employed as a peace officer.

15       7. 9. "Permanent employee" means ~~a state~~ an employee whose services are not limited  
16          in duration and who is filling an approved and regularly funded position and is  
17          employed twenty hours or more per week and at least five months each year.

18       8. 10. "Wages" and "salaries" means earnings in eligible employment under this chapter  
19          reported as salary on a federal income tax withholding statement plus any salary  
20          reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h),  
21          or 457. "Salary" does not include fringe benefits such as payments for unused sick  
22          leave, personal leave, vacation leave paid in a lump sum, overtime, housing  
23          allowances, transportation expenses, early retirement, incentive pay, severance  
24          pay, medical insurance, workers' compensation benefits, disability insurance  
25          premiums or benefits, or salary received by a member in lieu of previously  
26          employer-provided fringe benefits under an agreement between an employee and  
27          a participating employer. Bonuses may be considered as salary under this section  
28          if reported and annualized pursuant to rules adopted by the board.

29           **SECTION 8. AMENDMENT.** Subsection 1 of section 54-52.6-02 of the North Dakota  
30          Century Code is amended and reenacted as follows:

1           1. The board shall provide an opportunity for each ~~eligible employee~~ peace officer or  
2           correctional officer who is a member of the public employees retirement system on  
3           September 30, ~~2004~~ 2003, and who has not made a written election under this  
4           section to transfer to the defined contribution retirement plan before October 1,  
5           ~~2004~~ 2003, to elect in writing to terminate membership in the public employees  
6           retirement system and elect to become a participating member under this chapter.  
7           Except as provided in section 54-52.6-03, an election made by ~~an eligible~~  
8           ~~employee~~ a peace officer or correctional officer under this section is irrevocable.  
9           The board shall accept written elections under this section from ~~eligible employees~~  
10          peace officers and correctional officers during the period beginning on July 1,  
11          1999, and ending 12:01 a.m. December ~~14, 2004~~ 12, 2003. ~~An eligible employee~~  
12          A peace officer or correctional officer who does not make a written election or who  
13          does not file the election during the period specified in this section continues to be  
14          a member of the public employees retirement system. ~~An eligible employee~~ A  
15          peace officer or correctional officer who makes and files a written election under  
16          this section ceases to be a member of the public employees retirement system  
17          effective twelve midnight December 31, ~~2004~~ 2003; becomes a participating  
18          member in the defined contribution retirement plan under this chapter effective  
19          12:01 a.m. January 1, ~~2002~~ 2004; and waives all of that person's rights to a  
20          pension, annuity, retirement allowance, insurance benefit, or any other benefit  
21          under the public employees retirement system effective December 31, ~~2004~~ 2003.  
22          This section does not affect a person's right to health benefits or retiree health  
23          benefits under chapter 54-52.1. An eligible employee who is first employed and  
24          entered upon the payroll of that person's employer after September 30, 2001, and  
25          a peace officer or correctional officer who is first employed and entered upon the  
26          payroll of that person's employer after September 30, 2003, may make an election  
27          to participate in the defined contribution retirement plan established under this  
28          chapter at any time during the first six months after the date of employment. If the  
29          board, in its sole discretion, determines that the employee was not adequately  
30          notified of the employee's option to participate in the defined contribution  
31          retirement plan, the board may provide the employee a reasonable time within

1           which to make that election, which may extend beyond the original six-month  
2           decision window.

3           **SECTION 9.** A new section of chapter 54-52.6 of the North Dakota Century Code is  
4           created and enacted as follows:

5           **Political subdivisions authorized to join defined contribution retirement plan.**

- 6           1. A political subdivision, on behalf of its peace officers and correctional officers, may  
7           enter an agreement with the retirement board for the purpose of extending the  
8           benefits of the defined contribution retirement plan, as provided in this chapter, to  
9           those employees. The agreement may contain, in accordance with this chapter,  
10           provisions relating to contributions, effective date, modification, administration, and  
11           other appropriate provisions as the retirement board and the political subdivision  
12           may agree, but the agreement must provide that:
- 13           a. The political subdivision will contribute on behalf of each eligible employee an  
14           amount equal to that provided in section 5 of this Act.
- 15           b. A portion of the moneys paid by the political subdivision may be used to pay  
16           administrative expenses of the retirement board.
- 17           2. A political subdivision that merges an existing police pension plan into the public  
18           employees retirement system must provide an opportunity for its members to elect  
19           to participate in the defined contribution retirement plan under rules adopted by  
20           and in a manner determined by the board.

21           **SECTION 10. AMENDMENT.** Section 54-52.6-03 of the North Dakota Century Code is  
22           amended and reenacted as follows:

23           **54-52.6-03. Transfer of accumulated fund balances.** For an individual who elects to  
24           terminate membership in the public employees retirement system under chapter 54-52, the  
25           board shall transfer a lump sum amount from the retirement fund to the participating member's  
26           account in the defined contribution retirement plan under this chapter. However, if the  
27           individual terminates employment prior to receiving the lump sum transfer under this section,  
28           the election made under section 54-52.6-02 is ineffective and the individual remains a member  
29           of the public employees retirement system under chapter 54-52 and retains all the rights and  
30           benefits provided under that chapter. The board shall calculate the amount to be transferred for

1 persons employed before October 1, ~~2004~~ 2003, using the two following formulas, and shall  
2 transfer the greater of the two amounts obtained:

3 1. The actuarial present value of the individual's accumulated benefit obligation under  
4 the public employees retirement system based on the assumption that the  
5 individual will retire under the earliest applicable normal retirement age, plus  
6 interest from January 1, ~~2004~~ 2004, to the date of transfer, at the rate of one-half of  
7 one percent less than the actuarial interest assumption at the time of the election;  
8 or

9 2. The actual employer contribution made, less vested employer contributions made  
10 pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of  
11 one percent less than the actuarial interest assumption at the time of the election  
12 plus the employee account balance.

13 The board shall calculate the amount to be transferred for persons employed after  
14 September 30, ~~2004~~ 2003, using only the formula contained in subsection 2.

15 **SECTION 11.** A new section of chapter 54-52.6 of the North Dakota Century Code is  
16 created and enacted as follows:

17 **Contribution by peace officers and correctional officers - Employer contribution.**

18 Each peace officer and correctional officer who participates in the defined contribution  
19 retirement plan established under this chapter is assessed and shall pay monthly four percent  
20 of the employee's monthly salary or wage paid to the participant. The assessment must be  
21 deducted and retained out of the employee's salary in equal monthly installments. The peace  
22 officer's or correctional officer's employer shall contribute an amount equal to that paid by the  
23 employer under section 5 of this Act for peace officer and correctional officer members of the  
24 public employees retirement system defined benefit retirement plan. The employer's  
25 contribution must be paid from funds appropriated for salary or from any other funds available  
26 for such purposes. If the peace officer's or correctional officer's assessment is paid by the  
27 employer under subsection 3 of section 54-52.6-09, the employer shall contribute, in addition,  
28 an amount equal to the required peace officer's or correctional officer's assessment.