

Sixty-seventh  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2046

Introduced by

Government and Veterans Affairs Committee

(At the request of the Public Employees Retirement System)

1 A BILL ~~for an Act to amend and reenact subsection 1 of section 54-52-02.9, subsection 2 of~~  
2 ~~section 54-52-05, subsection 1 of section 54-52-06, subsection 6 of section 54-52.6-02, and~~  
3 ~~section 54-52.6-09 of the North Dakota Century Code, relating to increased employer and~~  
4 ~~employee contributions under the public employees retirement system defined benefit and~~  
5 ~~defined contribution plans; and to provide a penalty~~for an Act to create and enact sections  
6 54-52-02.15, 54-52-02.16, and 54-52.6-02.1 of the North Dakota Century Code, relating to the  
7 public employees retirement system main system and membership in the public employees  
8 retirement system defined contribution plan; to amend and reenact subsection 4 of section  
9 54-52-01, sections 54-52-02.5 and 54-52-02.9, subsection 2 of section 54-52-05, subsection 1  
10 of section 54-52-06, and sections 54-52.6-01, 54-52.6-02, and 54-52.6-03 of the North Dakota  
11 Century Code, relating to the public employees retirement system retirement plans; to provide a  
12 statement of legislative intent; to provide for a legislative management study; to provide an  
13 appropriation; to provide for a transfer; to provide for application; and to provide an effective  
14 date.

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

16 ~~SECTION 1. AMENDMENT.~~ Subsection 1 of section 54-52-02.9 of the North Dakota  
17 Century Code is amended and reenacted as follows:  
18 ~~1. Within one hundred eighty days of beginning employment, a temporary employee may~~  
19 ~~elect to participate in the public employees retirement system and receive credit for~~  
20 ~~service after enrollment. Monthly, the temporary employee shall pay to the fund an~~  
21 ~~amount equal to eight and twelve hundredths percent times the temporary employee's~~  
22 ~~present monthly salary. The amount required to be paid by a temporary employee~~  
23 ~~increases by two percent times the temporary employee's present monthly salary~~  
24 ~~beginning with the monthly reporting period of January 2012, and; with an additional~~

1           two percent increase ~~of two percent~~, beginning with the reporting period of  
2           January 2013, and; with an additional increase of two percent, beginning with the  
3           monthly reporting period of January 2014; ~~and with an additional increase of~~  
4           ~~one percent, beginning with the monthly reporting period of January 2022.~~

5       — **SECTION 2. AMENDMENT.** Subsection 2 of section 54-52-05 of the North Dakota Century  
6       Code is amended and reenacted as follows:

7       — 2. — Each member must be assessed and required to pay monthly four percent of the  
8           monthly salary or wage paid to the member, and such assessment must be deducted  
9           and retained out of such salary in equal monthly installments commencing with the  
10          first month of employment. Member contributions increase by one percent of the  
11          monthly salary or wage paid to the member beginning with the monthly reporting  
12          period of January 2012, and; with an additional increase of one percent, beginning  
13          with the monthly reporting period of January 2013, and; with an additional increase of  
14          one percent, beginning with the monthly reporting period of January 2014; ~~and with an~~  
15          ~~additional increase of one half of one percent, beginning with the monthly reporting~~  
16          ~~period of January 2022.~~

17       — **SECTION 3. AMENDMENT.** Subsection 1 of section 54-52-06 of the North Dakota Century  
18       Code is amended and reenacted as follows:

19       — 1. — Each governmental unit shall contribute an amount equal to four and  
20          twelve-hundredths percent of the monthly salary or wage of a participating member.  
21          Governmental unit contributions increase by one percent of the monthly salary or  
22          wage of a participating member beginning with the monthly reporting period of  
23          January 2012; with an additional increase of one percent, beginning with the reporting  
24          period of January 2013; and with an additional increase of one percent, beginning with  
25          the monthly reporting period of January 2014; ~~and with an additional increase of~~  
26          ~~one half of one percent, beginning with the monthly reporting period of January 2022.~~  
27          For a participating member who first enrolls after December 31, 2019, the  
28          governmental unit shall contribute an additional amount equal to one and fourteen-  
29          hundredths percent of the monthly salary or wage of the participating member.

30       — **SECTION 4. AMENDMENT.** Subsection 6 of section 54-52.6-02 of the North Dakota  
31       Century Code is amended and reenacted as follows:

1 ~~6. A participating member who becomes a temporary employee may still participate in~~  
2 ~~the defined contribution retirement plan upon filing an election with the board within~~  
3 ~~one hundred eighty days of transferring to temporary employee status. The~~  
4 ~~participating member may not become a member of the defined benefit plan as a~~  
5 ~~temporary employee. The temporary employee electing to participate in the defined~~  
6 ~~contribution retirement plan shall pay monthly to the fund an amount equal to eight~~  
7 ~~and twelve hundredths percent times the temporary employee's present monthly~~  
8 ~~salary. The amount required to be paid by a temporary employee increases by two~~  
9 ~~percent times the temporary employee's present monthly salary beginning with the~~  
10 ~~monthly reporting period of January 2012, and, with an additional increase of two~~  
11 ~~percent, beginning with the monthly reporting period of January 2013, and, with an~~  
12 ~~additional increase of two percent, beginning with the monthly reporting period of~~  
13 ~~January 2014; and with an additional increase of one percent, beginning with the~~  
14 ~~monthly reporting period of January 2022. The temporary employee also shall also~~  
15 ~~pay the required monthly contribution to the retiree health benefit fund established~~  
16 ~~under section 54-52.1-03.2. This contribution must be recorded as a member~~  
17 ~~contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary~~  
18 ~~employee's contributions. A temporary employee may continue to participate as a~~  
19 ~~temporary employee until termination of employment or reclassification of the~~  
20 ~~temporary employee as a permanent employee.~~

21 ~~SECTION 5. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is~~  
22 ~~amended and reenacted as follows:~~

23 ~~**54-52.6-09. Contributions -- Penalty.**~~

24 ~~1. Each participating member shall contribute monthly four percent of the monthly salary~~  
25 ~~or wage paid to the participant, and this assessment must be deducted from the~~  
26 ~~participant's salary in equal monthly installments commencing with the first month of~~  
27 ~~participation in the defined contribution retirement plan established under this chapter.~~  
28 ~~Participating member contributions increase by one percent of the monthly salary or~~  
29 ~~wage paid to the participant beginning with the monthly reporting period of~~  
30 ~~January 2012; with an additional increase of one percent, beginning with the reporting~~  
31 ~~period of January 2013; and with an additional increase of one percent, beginning with~~

1           the monthly reporting period of January 2014; ~~and with an additional increase of~~  
2           ~~one-half of one percent, beginning with the monthly reporting period of January 2022.~~

3     ~~2. The employer shall contribute an amount equal to four and twelve-hundredths percent~~  
4     ~~of the monthly salary or wage of a participating member. Employer contributions~~  
5     ~~increase by one percent of the monthly salary or wage of a participating member~~  
6     ~~beginning with the monthly reporting period of January 2012; with an additional~~  
7     ~~increase of one percent, beginning with the monthly reporting period of January 2013;~~  
8     ~~and with an additional increase of one percent, beginning with the monthly reporting~~  
9     ~~period of January 2014; and with an additional increase of one-half of one percent,~~  
10    ~~beginning with the monthly reporting period of January 2022. For members first~~  
11    ~~enrolled after December 31, 2019, the employer contribution includes an additional~~  
12    ~~increase of one and fourteen-hundredths percent. If the employee's contribution is~~  
13    ~~paid by the employer under subsection 3, the employer shall contribute, in addition, an~~  
14    ~~amount equal to the required employee's contribution. Monthly, the employer shall pay~~  
15    ~~such contribution into the participating member's account from the employer's funds~~  
16    ~~appropriated for payroll and salary or any other funds available for such purposes. If~~  
17    ~~the employer fails to pay the contributions monthly, the employer is subject to a civil~~  
18    ~~penalty of fifty dollars and, as interest, one percent of the amount due for each month~~  
19    ~~of delay or fraction of a month after the payment became due. In lieu of assessing a~~  
20    ~~civil penalty or one percent per month, or both, interest at the actuarial rate of return~~  
21    ~~may be assessed for each month the contributions are delinquent. If contributions are~~  
22    ~~paid within ninety days of the date the contributions became due, penalty and interest~~  
23    ~~to be paid on delinquent contributions may be waived.~~

24    ~~3. Each employer, at its option, may pay the employee contributions required by this~~  
25    ~~section for all compensation earned after December 31, 1999. The amount paid must~~  
26    ~~be paid by the employer in lieu of contributions by the employee. If the employer~~  
27    ~~decides not to pay the contributions, the amount that would have been paid will~~  
28    ~~continue to be deducted from the employee's compensation. If contributions are paid~~  
29    ~~by the employer, they must be treated as employer contributions in determining tax~~  
30    ~~treatment under this code and the federal Internal Revenue Code. Contributions paid~~  
31    ~~by the employer may not be included as gross income of the employee in determining~~

1 tax treatment under this code and the federal Internal Revenue Code until they are  
2 distributed or made available. The employer shall pay these employee contributions  
3 from the same source of funds used in paying compensation to the employee. The  
4 employer shall pay these contributions by effecting an equal cash reduction in the  
5 gross salary of the employee or by an offset against future salary increases or by a  
6 combination of a reduction in gross salary and offset against future salary increases.  
7 Employee contributions paid by the employer must be treated for the purposes of this  
8 chapter in the same manner and to the same extent as employee contributions made  
9 before the date on which employee contributions were assumed by the employer. An  
10 employer shall exercise its option under this subsection by reporting its choice to the  
11 board in writing.

12 **SECTION 1. AMENDMENT.** Subsection 4 of section 54-52-01 of the North Dakota Century  
13 Code is amended and reenacted as follows:

- 14 4. "Eligible employee" means all permanent employees who are participating members  
15 before July 1, 2023, and who meet all of the eligibility requirements set by this chapter  
16 and who are eighteen years or more of age, and includes appointive and elective  
17 officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12 who are  
18 participating members before July 1, 2023, and nonteaching employees of the  
19 superintendent of public instruction, including the superintendent of public instruction,  
20 who ~~elect~~elect to transfer from the teachers' fund for retirement to the public  
21 employees retirement system under section 54-52-02.13, and employees of the state  
22 board for career and technical education who ~~elect~~elect to transfer from the  
23 teachers' fund for retirement to the public employees retirement system under section  
24 54-52-02.14. Eligible employee does not include ~~nonclassified~~ state employees who  
25 ~~elect to become members of the retirement plan established under chapter 54-52.6~~are  
26 first employed after June 30, 2023, and are not participating members, but does  
27 include ~~employees of the judicial branch~~supreme court judges and district court  
28 judges, employees eligible to participate in a law enforcement retirement plan,  
29 employees of a participating political subdivision, and employees of the board of  
30 higher education and state institutions under the jurisdiction of the board who are not

1 participating in the teachers' insurance and annuity association of America - college  
2 retirement equities fund retirement plan.

3 **SECTION 2. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **54-52-02.5. Newly elected and appointed state officials.**

6 After December 31, 1999, ~~a person~~ and before July 1, 2023, an individual elected or  
7 appointed to a state office for the first time must, from and after the date that ~~person~~ individual  
8 qualifies and takes office, be a participating member of the public employees retirement system  
9 unless that ~~person~~ individual makes an election at any time during the first six months after the  
10 date the person takes office to participate in the retirement plan established under chapter  
11 54-52.6. After June 30, 2023, an individual elected or appointed to a state office, from and after  
12 the date the individual qualifies and takes office, must be a participating member of the  
13 retirement plan established under chapter 54-52.6 unless at the time of election or appointment  
14 the individual is an eligible employee and a participating member under this chapter. As used in  
15 this section, the phrase "for the first time" means ~~a person~~ an individual appointed, who, after  
16 December 31, 1999, and before July 1, 2023, does not hold office as an appointed official at the  
17 time of that ~~person's~~ individual's appointment.

18 **SECTION 3. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **54-52-02.9. Participation by temporary employees.**

- 21 1. ~~Within~~ Before July 1, 2023, within one hundred eighty days of beginning employment, a  
22 state temporary employee may elect to participate in the public employees retirement  
23 system under this chapter and receive credit for service after enrollment. Within one  
24 hundred eighty days of beginning employment, a participating political subdivision  
25 temporary employee may elect to participate in the public employees retirement  
26 system under this chapter and receive credit for service after enrollment.
- 27 a. Monthly, the state temporary employee shall pay to the fund an amount equal to  
28 ~~eight~~ twelve and twelve hundredths percent times the temporary employee's  
29 present monthly salary. The amount required to be paid by a temporary employee  
30 increases by two percent times the temporary employee's present monthly salary  
31 beginning with the monthly reporting period of January ~~2012, and with an~~

~~additional two percent increase, beginning with the reporting period of  
January 2013, and with an additional increase of two percent, beginning with the  
monthly reporting period of January 2014.~~

b. Monthly, the political subdivision temporary employee shall pay to the fund an  
amount equal to twelve and twelve hundredths percent times the temporary  
employee's present monthly salary. The amount required to be paid by a  
temporary employee increases by two percent times the temporary employee's  
present monthly salary beginning with the monthly reporting period of January  
2014 and with an additional one percent increase beginning with the reporting  
period of January 2024.

2. If the temporary employee first enrolled:

a. Before January 1, 2020, in addition the temporary employee shall pay the  
required monthly contribution to the retiree health benefit fund established under  
section 54-52.1-03.2. This contribution must be recorded as a member  
contribution pursuant to section 54-52.1-03.2.

b. After December 31, 2019, the temporary employee shall pay to the fund an  
additional amount equal to one and fourteen hundredths percent times the  
temporary employee's present monthly salary.

3. An employer may not pay the temporary employee's contributions. A temporary  
employee may continue to participate as a temporary employee in the public  
employees retirement system until termination of employment or reclassification of the  
temporary employee as a permanent employee. A temporary employee may not  
purchase any additional credit, including additional credit under section 54-52-17.4 or  
past service under section 54-52-02.6.

**SECTION 4.** Section 54-52-02.15 of the North Dakota Century Code is created and enacted  
as follows:

**54-52-02.15. Public employees retirement system main system - Political  
subdivisions.**

Effective June 30, 2023, the board shall maintain a plan for political subdivisions that  
participate in the public employees retirement system main system which is separate from the  
main plan maintained for the state.

1       **SECTION 5.** Section 54-52-02.16 of the North Dakota Century Code is created and enacted  
2 as follows:

3       **54-52-02.16. Public employees retirement system main system - State employees.**

4       Effective July 1, 2023, the public employees retirement system main plan maintained for the  
5 state is closed to new participating members. Additionally, a deferred member under this  
6 chapter who is re-employed under the main plan may not re-enter the plan under this section  
7 but is a participating member under chapter 54-52.6. This section does not impact the main plan  
8 maintained for participating political subdivisions, law enforcement plan, judges' plan, highway  
9 patrol plan, teachers' fund for retirement plan, or teachers' insurance and annuity association of  
10 America - college retirement equities fund retirement plan.

11       **SECTION 6. AMENDMENT.** Subsection 2 of section 54-52-05 of the North Dakota Century  
12 Code is amended and reenacted as follows:

13       2. Each participating member must be assessed and required to pay monthly ~~four~~six  
14 percent of the monthly salary or wage paid to the member, and such assessment must  
15 be deducted and retained out of such salary in equal monthly installments  
16 commencing with the first month of employment. ~~Member~~

17       a. State participating member contributions increase by one percent of the monthly  
18 salary or wage paid to the member beginning with the monthly reporting period of  
19 January ~~2012, and with an additional increase of one percent, beginning with the~~  
20 ~~monthly reporting period of January 2013, and with an additional increase of one~~  
21 ~~percent, beginning with the monthly reporting period of January 2014.~~

22       b. Political subdivision participating member contributions increase by one percent  
23 of the monthly salary or wage paid to the member beginning with the monthly  
24 reporting period of January 2014 and with an additional increase of one-half of  
25 one percent beginning with the monthly reporting period of January 2024.

26       **SECTION 7. AMENDMENT.** Subsection 1 of section 54-52-06 of the North Dakota Century  
27 Code is amended and reenacted as follows:

28       1. Each governmental unit shall contribute an amount equal to ~~four~~six and  
29 twelve-hundredths percent of the monthly salary or wage of a participating member.

30       ~~Governmental~~

1 a. State governmental unit contributions increase by one percent of the monthly  
2 salary or wage of a participating member beginning with the monthly reporting  
3 period of January 2012; ~~with an additional increase of one percent, beginning~~  
4 ~~with the reporting period of January 2013; and with an additional increase of one~~  
5 ~~percent, beginning with the monthly reporting period of January 2014.~~

6 b. Political subdivision governmental unit contributions increase by one percent of  
7 the monthly salary or wage of a participating member beginning with the monthly  
8 reporting period of January 2014 and with an additional increase of one-half of  
9 one percent beginning with the monthly reporting period of January 2024.

10 c. For a participating member who first enrolls after December 31, 2019, the  
11 governmental unit shall contribute an additional amount equal to one and  
12 fourteen-hundredths percent of the monthly salary or wage of the participating  
13 member.

14 **SECTION 8. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **54-52.6-01. Definition of terms.**

17 As used in this chapter, unless the context otherwise requires:

- 18 1. "Board" means the public employees retirement system board.
- 19 2. "Deferred member" means a person who elected to receive deferred vested retirement  
20 benefits under chapter 54-52.
- 21 3. "Eligible employee" means a permanent state employee, ~~except an employee of the~~  
22 ~~judicial branch or an employee of the board of higher education and state institutions~~  
23 ~~under the jurisdiction of the board~~, who is eighteen years or more of age ~~and who is in~~  
24 ~~a position not classified by North Dakota human resource management services.~~ If a  
25 participating member loses permanent employee status and becomes a temporary  
26 employee, the member may still participate in the defined contribution retirement plan.  
27 The term does not include a supreme court judge or a district court judge, an  
28 employee eligible to participate in a law enforcement retirement plan, an employee of  
29 a political subdivision, or an employee of the state board of higher education and state  
30 institutions under the jurisdiction of the state board of higher education who is

participating in the teachers' insurance and annuity association of America - college retirement equities fund retirement plan.

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 to participate~~participates in the defined contribution retirement plan established under this chapter.

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

8. "Temporary employee" means a state employee who is not eligible to participate as a permanent employee, who is at least eighteen years old, and not actively contributing to another employer-sponsored pension fund.

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

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

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

1. The board shall provide an opportunity for each eligible employee who is first employed before July 1, 2023, and who is a member of the state public employees

1 retirement system on ~~September 30, 2001,~~ and who has not made a written election  
2 ~~under this section~~ July 3, 2023, to transfer to the defined contribution retirement plan  
3 ~~before October 1, 2001, to elect~~ by electing in writing to terminate membership in the  
4 public employees retirement system and elect to become a participating member  
5 under 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 ~~July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who~~  
9 ~~does not make a written election or who does not file the election during the period~~  
10 ~~specified in this section continues to be a member of the public employees retirement~~  
11 ~~system.~~ An eligible employee who ~~makes and files a written election~~ transfers to the  
12 defined contribution plan under this section ceases to be a member of the public  
13 employees retirement system ~~effective twelve midnight December 31, 2001;~~ under  
14 chapter 54-52 and becomes a participating member in the defined contribution  
15 retirement plan under this chapter ~~effective 12:01 a.m. January 1, 2002;~~ and waives all  
16 of that ~~person's~~ individual's rights to a pension, annuity, retirement allowance,  
17 insurance benefit, or any other benefit under the public employees retirement system  
18 ~~effective December 31, 2001.~~ 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 who is  
20 first employed and entered upon the payroll of that person's employer ~~after~~  
21 ~~September 30, 2001,~~ may make an election to participate in the defined contribution  
22 retirement plan established under this chapter at any time during the ~~first six months~~  
23 ~~after the date of employment. If the board, in its sole discretion, determines that the~~  
24 ~~employee was not adequately notified of the employee's option to participate in the~~  
25 ~~defined contribution retirement plan, the board may provide the employee a~~  
26 ~~reasonable time within which to make that election, which may extend beyond the~~  
27 ~~original six-month decision window~~ period beginning July 3, 2023, and ending  
28 5:00 p.m. December 29, 2023.

- 29 2. If an individual who is a deferred member of the public employees retirement system  
30 on ~~September 30, 2001~~ June 30, 2023, is re-employed ~~and by virtue of,~~ that  
31 employment ~~is again~~ does not make that deferred member eligible for membership in

1 the public employees retirement system under chapter 54-52, ~~the individual may elect~~  
2 ~~in writing to remain a member of the public employees retirement system or if eligible~~  
3 ~~to participate in the defined contribution retirement plan established under this chapter~~  
4 ~~to terminate membership in the public employees retirement system and become a~~  
5 ~~participating member in the defined contribution retirement plan established under this~~  
6 ~~chapter. An election made by a deferred member under this section is irrevocable. The~~  
7 ~~board shall accept written elections under this section from a deferred member during~~  
8 ~~the period beginning on the date of the individual's re-employment and ending upon~~  
9 ~~the expiration of six months after the date of that re-employment. If the board, in its~~  
10 ~~sole discretion, determines that the employee was not adequately notified of the~~  
11 ~~employee's option to participate in the defined contribution retirement plan, the board~~  
12 ~~may provide the employee a reasonable time within which to make that election, which~~  
13 ~~may extend beyond the original six-month decision window. A deferred member who~~  
14 ~~makes and files a written election to remain a member of the public employees~~  
15 ~~retirement system retains all rights and is subject to all conditions as a member of that~~  
16 ~~retirement system. A deferred member who does not make a written election or who~~  
17 ~~does not file the election during the period specified in this section continues to be a~~  
18 ~~member of the public employees retirement system. A deferred member who makes~~  
19 ~~and files a written election to terminate membership in the public employees~~  
20 ~~retirement system ceases to be a member of the public employees retirement system~~  
21 ~~effective on the last day of the payroll period that includes the date of the election;~~  
22 ~~becomes a participating member in the defined contribution retirement plan under this~~  
23 ~~chapter effective the first day of the payroll immediately following the date of the~~  
24 ~~election; and waives all of that person's rights to a pension, an annuity, a retirement~~  
25 ~~allowance, insurance benefit, or any other benefit under the public employees~~  
26 ~~retirement system effective the last day of the payroll that includes the date of the~~  
27 ~~election. A deferred member that is re-employed becomes a participating member~~  
28 ~~under this chapter.~~ This section does not affect any right to health benefits or retiree  
29 health benefits to which the deferred member may otherwise be entitled.

- 30 3. An eligible employee who elects to participate in the retirement plan established under  
31 this chapter must remain a participant even if that employee returns to the classified

1 service or becomes employed by a political subdivision that participates in the public  
2 employees retirement system. The contribution amount must be as provided in this  
3 chapter, regardless of the position in which the employee is employed.

4 Notwithstanding the irrevocability provisions of this chapter, if a member who elects to  
5 participate in the retirement plan established under this chapter becomes a supreme  
6 or district court judge, becomes a member of the highway patrol, becomes employed  
7 in a position subject to teachers' fund for retirement membership, or becomes an  
8 employee of the board of higher education or state institution under the jurisdiction of  
9 the board who is eligible to participate in an alternative retirement program established  
10 under subsection 6 of section 15-10-17, the member's status as a member of the  
11 defined contribution retirement plan is suspended, and the member becomes a new  
12 member of the retirement plan for which that member's new position is eligible. The  
13 member's account balance remains in the defined contribution retirement plan, but no  
14 new contributions may be made to that account. The member's service credit and  
15 salary history that were forfeited as a result of the member's transfer to the defined  
16 contribution retirement plan remain forfeited, and service credit accumulation in the  
17 new retirement plan begins from the first day of employment in the new position. If the  
18 member later returns to employment that is eligible for the defined contribution plan,  
19 the member's suspension must be terminated, the member again becomes a member  
20 of the defined contribution retirement plan, and the member's account resumes  
21 accepting contributions. At the member's option, and pursuant to rules adopted by the  
22 board, the member may transfer any available balance as determined by the  
23 provisions of the alternate retirement plan into the member's account under this  
24 chapter.

- 25 4. After consultation with its actuary, the board shall determine the method by which a  
26 participating member ~~or deferred member~~ may make a written election under this  
27 section. If the participating member ~~or deferred member~~ is married at the time of the  
28 election, the election is not effective unless the election is signed by the individual's  
29 spouse. However, the board may waive this requirement if the spouse's signature  
30 cannot be obtained because of extenuating circumstances.

- 1       5. If the board receives notification from the internal revenue service that this section or  
2       any portion of this section will cause the public employees retirement system or the  
3       retirement plan established under this chapter to be disqualified for tax purposes  
4       under the Internal Revenue Code, then the portion that will cause the disqualification  
5       does not apply.
- 6       6. A participating member who becomes a temporary employee may still participate in  
7       the defined contribution retirement plan upon filing an election with the board within  
8       one hundred eighty days of transferring to temporary employee status. The  
9       participating member may not become a member of the defined benefit plan as a  
10      temporary employee. The temporary employee electing to participate in the defined  
11      contribution retirement plan shall pay monthly to the fund an amount equal to  
12      ~~eight~~twelve and twelve hundredths percent times the temporary employee's present  
13      monthly salary. The amount required to be paid by a temporary employee increases  
14      by two percent times the temporary employee's present monthly salary beginning with  
15      the monthly reporting period of January ~~2012, and with an additional increase of two~~  
16      ~~percent, beginning with the monthly reporting period of January 2013, and with an~~  
17      ~~additional increase of two percent, beginning with the monthly reporting period of~~  
18      ~~January~~ 2014. The temporary employee shall also pay the required monthly  
19      contribution to the retiree health benefit fund established under section 54-52.1-03.2.  
20      This contribution must be recorded as a member contribution pursuant to section  
21      54-52.1-03.2. An employer may not pay the temporary employee's contributions. A  
22      temporary employee may continue to participate as a temporary employee until  
23      termination of employment or reclassification of the temporary employee as a  
24      permanent employee.
- 25      7. A former participating member who has accepted a retirement distribution pursuant to  
26      section 54-52.6-13 and who subsequently becomes employed by an entity different  
27      from the employer with which the member was employed at the time the member  
28      retired but which does participate in any state-sponsored retirement plan may, before  
29      re-enrolling in the defined contribution retirement plan, elect to permanently waive  
30      future participation in the defined contribution retirement plan, whatever plan in which  
31      the new employing entity participates, and the retiree health program and maintain

1 that member's retirement status. Neither the member nor the employer are required to  
2 make any future retirement contributions on behalf of that employee.

3 **SECTION 10.** Section 54-52.6-02.1 of the North Dakota Century Code is created and  
4 enacted as follows:

5 **54-52.6-02.1. Membership.**

6 1. Except as otherwise provided, all eligible employees who are not participating in the  
7 public employees retirement system under chapter 54-52 are participating members.

8 This subsection does not impact the public employees retirement system main plan  
9 maintained for participating political subdivisions, law enforcement plan, judges' plan,  
10 highway patrol plan, teachers' fund for retirement plan, or teachers' insurance and  
11 annuity association of America - college retirement equities fund retirement plan.

12 2. Effective July 1, 2023, a temporary employee may elect, within one hundred eighty  
13 days of beginning employment, to participate in the defined contribution plan under  
14 this chapter. The temporary employee electing to participate in the defined contribution  
15 retirement plan shall pay monthly to the fund an amount equal to fourteen and twelve-  
16 hundredths percent. This contribution must be recorded as a member contribution  
17 pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's  
18 contributions.

19 **SECTION 11. AMENDMENT.** Section 54-52.6-03 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **54-52.6-03. Transfer of accumulated fund balances.**

22 For an individual who elects to terminate membership in the public employees retirement  
23 system under chapter 54-52, the board shall transfer a lump sum amount from the retirement  
24 fund to the participating member's account in the defined contribution retirement plan under this  
25 chapter. However, if the individual terminates employment prior to receiving the lump sum  
26 transfer under this section, the election made under section 54-52.6-02 is ineffective and the  
27 individual remains a member of the public employees retirement system under chapter 54-52  
28 and retains all the rights and benefits provided under that chapter. The board shall calculate the  
29 amount to be transferred ~~for persons employed before October 1, 2001,~~ using the two following  
30 formulas, and shall transfer the greater of the two amounts obtained:

1. ~~The~~For a vested or a nonvested individual, an estimate of the actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from ~~January 1, 2001,~~the date the board receives the election to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or
2. ~~The~~For a nonvested individual, an estimate of the actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

~~The board shall calculate the amount to be transferred for persons employed after September 30, 2001, using only the formula contained in subsection 2.~~

**SECTION 12. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the legislative council for the purpose of contracting with a consultant to conduct actuarial analyses as provided for under section 18 of this Act, for the biennium beginning July 1, 2021, and ending June 30, 2023.

**SECTION 13. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$150,000, or so much of the sum as may be necessary, to the public employees retirement system for the purpose of hiring temporary employees for the purpose of implementing this Act, for the biennium beginning July 1, 2021, and ending June 30, 2023.

**SECTION 14. PUBLIC EMPLOYEES RETIREMENT SYSTEM - ESTIMATE OF ACCUMULATED BALANCE TRANSFER.** For the period beginning July 3, 2023, and ending December 29, 2023, upon the request of an individual who is eligible for termination of membership in the public employees retirement system under chapter 54-52 as provided for in subsection 1 of section 54-52.6-02, the public employees retirement system shall estimate the individual's accumulated balance transfer amount.

**SECTION 15. TRANSFER - BUDGET STABILIZATION FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND.** The office of management and budget shall transfer the sum of \$100,000,000 from the budget stabilization fund to the public employees retirement system

1 main system plan for state employees on June 30, 2023, for the purpose of reducing the  
2 unfunded actuarial liability of the state share of the public employees retirement system main  
3 system plan for state employees.

4 **SECTION 16. LEGISLATIVE INTENT - PUBLIC EMPLOYEES RETIREMENT SYSTEM**

5 **FUNDING.** It is the intent of the the sixty-seventh legislative assembly that each biennium the  
6 legislative assembly provide \$55,000,000 in funding to the public employees retirement system  
7 main system main plan for state employees to reduce the unfunded liability of the plan until the  
8 plan reaches full funding.

9 **SECTION 17. LEGISLATIVE INTENT - EMPLOYEE BENEFITS PROGRAMS**

10 **COMMITTEE.** It is the intent of the sixty-seventh legislative assembly that this Act be exempt  
11 from the requirement under section 54-35-02.4 that the measure be accompanied by a report  
12 from the employee benefits programs committee and exempt from the provision that any  
13 legislation enacted in contravention of section 54-35-02.4 be reduced to the level current prior  
14 to enactment.

15 **SECTION 18. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES**

16 **RETIREMENT SYSTEM RETIREMENT PLANS.**

- 17 1. During the 2021-22 interim, the legislative management shall study the public  
18 employees retirement system retirement plans, including:
- 19 a. Reviewing the financial status of the main system main plan under chapter 54-52  
20 and the defined contribution plan under chapter 54-52.6;
  - 21 b. The legislative management contracting for actuarial analyses of the main  
22 system main plan under chapter 54-52 and the defined benefit plan under  
23 chapter 54-52.6;
  - 24 c. Codifying the separation of the plan for political subdivisions that participate so  
25 the plan funds are not held in trust with the other plans in the public employees  
26 retirement system main system; and
  - 27 d. Codifying how to calculate service of members who have dual service in both the  
28 state and political subdivision plans.
- 29 2. The legislative management shall report its findings and recommendations, together  
30 with any legislation required to implement the recommendations, to the sixty-eighth  
31 legislative assembly.

1       **SECTION 19. APPLICATION.** In implementing section 4 of this Act, effective June 30,  
2 2023, for all current active and retired members, deferred members, and surviving spouses and  
3 beneficiaries of the public employees retirement system main plan, the public employees  
4 retirement system board shall calculate separate data on the actuarial accrued liability, actuarial  
5 value of assets, and unfunded actuarial liability for the main system plan for state employees  
6 and the plan for political subdivisions.

7       **SECTION 20. EFFECTIVE DATE.** Sections 1, 2, 3, 6, 7, 8, 9, 10, and 11 of this Act become  
8 effective on July 1, 2023.