Sixty-third
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

(At the request of the Public Employees Retirement System Board)

A BILL for an Act to create and enact a new section to chapter 54-52.6 of the North Dakota Century Code, relating to plan modifications to the public employees retirement system defined contribution retirement plan required to maintain compliance with the Internal Revenue Code; to amend and reenact sections 39-03.1-11.2, 39-03.1-29, subsection 11 of section 54-52-04, sections 54-52-17, 54-52-23, 54-52-28, 54-52.3-03, and 54-52.6-13 of the North Dakota Century Code, relating to incorporation of Internal Revenue Code compliance under the highway patrolmen's retirement plan and public employees retirement system, updating appropriate committee designations for the savings clauses under the highway patrolmen's retirement plan and public employees retirement system, the board's authority to fund administrative expenses, normal retirement dates for a peace officer or correctional officer, normal retirement dates for a national guard security officer or firefighter, normal retirement dates for a peace officer employed by the bureau of criminal investigation, removal of the level social security retirement benefit option under the public employees retirement system, defrayal of expenses associated with the pretax benefits program; and distribution of a deceased participant's accumulated account balance under the defined contribution retirement plan; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-11.2. Internal Revenue Code compliance.

The board shall administer the plan in compliance with the following sections of the Internal Revenue Code in effect on August 1, ~~2011~~2013, as it applies for governmental plans.

1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code.

a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.

b. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable.

c. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. This reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan.

2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. A member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment.

3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).
4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee.
5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded.

SECTION 2. AMENDMENT. Section 39-03.1-29 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-29. Savings clause - Plan modifications.

If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee ~~on public employees retirement programs~~. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 3. AMENDMENT. Subsection 11 of section 54-52-04 of the North Dakota Century Code is amended and reenacted as follows:

11. The board shall fund the administrative expenses of chapter 54-52.2 from funds collected under chapters 54-52, 54-52.1, and 54-52.3 and from fines and fees collected from deferred compensation services providers, including any fees paid for by participant funds, subject to appropriation by the legislative assembly.

SECTION 4. AMENDMENT. Section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

1 **54-52-17. Formulation of plan.**

2 Participating members shall receive benefits according to this section and according to
3 rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a
4 prior service benefit if the person was not continuously employed by a governmental unit in
5 North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

6 1. Participating members shall receive credit for full-time employment or its equivalent
7 from the date they attain eligibility until their normal retirement date, postponed
8 retirement date, or early retirement date, as defined in this section. Part-time
9 employment will be recognized as full-time employment on a prorated basis as the
10 board may prescribe.

11 2. Retirement benefits are calculated from the participating member's final average
12 salary, which is the average of the highest salary received by the member for any
13 thirty-six months employed during the last one hundred twenty months of employment.
14 For members who terminate employment on or after August 1, 2010, final average
15 salary is the average of the highest salary received by the member for any thirty-six
16 months employed during the last one hundred eighty months of employment. For
17 members who terminate employment between July 31, 2005, and August 1, 2010, final
18 average salary is the average of the highest salary received by the member for any
19 thirty-six months employed during the period for which the board has appropriate and
20 accurate salary records on its electronic database, but that period may not be more
21 than the last one hundred eighty months of employment. Months not employed are
22 excluded in arriving at the thirty-six months to be used for the purpose of computing an
23 average. If the participating member has worked for less than thirty-six months at the
24 normal retirement date, the final average salary is the average salary for the total
25 months of employment.

26 3. Retirement dates are defined as follows:

27 a. Normal retirement date, except for a national guard security officer or firefighter
28 or a peace officer or correctional officer employed by the bureau of criminal
29 investigation or by a political subdivision, is:

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

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

b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three ~~consecutive~~eligible years of employment as a national guard security officer or firefighter ~~immediately preceding retirement~~.

c. Normal retirement date for a peace officer or correctional officer employed by a political subdivision is:

(1) The first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty-five years and has completed at least three ~~consecutive~~eligible years of employment as a peace officer or correctional officer; or

(2) When the peace officer or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.

d. Normal retirement date for a peace officer employed by the bureau of criminal investigation is:

(1) The first day of the month next following the month in which the peace officer attains the age of fifty-five years and has completed at least three ~~consecutive~~eligible years of employment as a peace officer ~~immediately preceding retirement~~; or

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

e. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.

f. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal

investigation or by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.

g. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:

(1) Became disabled during the period of eligible employment; and

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

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

4. The board shall calculate retirement benefits as follows:

   a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

      (1) Service benefit equals two percent of final average salary multiplied by the number of years of service employment.

      (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.

   b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:

      (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.

      (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.

   c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.

   d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible

1 employment. A supreme or district court judge retiree is eligible for early
2 retirement benefits only after having completed five years of eligible employment.
3 e. Except for supreme and district court judges, disability retirement benefits are
4 twenty-five percent of the member's final average salary. Disability retirement
5 benefits for supreme and district court judges are seventy percent of final
6 average salary reduced by the member's primary social security benefits and by
7 any workforce safety and insurance benefits paid. The minimum monthly
8 disability retirement benefit under this section is one hundred dollars.
9 5. Upon termination of employment after completing three years of eligible employment,
10 except for supreme and district court judges, who must complete five years of eligible
11 employment, but before normal retirement date, a member who does not elect to
12 receive early retirement benefits is eligible to receive deferred vested retirement
13 benefits payable commencing on the member's normal retirement date in one of the
14 optional forms provided in subsection 9. Members who have delayed or inadvertently
15 failed to apply for retirement benefits to commence on their normal retirement date
16 may choose to receive either a lump sum payment equal to the amount of missed
17 payments, or an actuarial increase to the form of benefit the member has selected,
18 which increase must reflect the missed payments.
19 6. If before retiring a member dies after completing three years of eligible employment,
20 except for supreme and district court judges, who must have completed five years of
21 eligible employment, the board shall pay the member's account balance to the
22 member's designated beneficiary as provided in this subsection. If the member has
23 designated an alternate beneficiary with the surviving spouse's written consent, the
24 board shall pay the member's account balance to the named beneficiary. If the
25 member has named more than one primary beneficiary, the board shall pay the
26 member's account balance to the named primary beneficiaries in the percentages
27 designated by the member or, if the member has not designated a percentage for the
28 beneficiaries, in equal percentages. If one or more of the primary beneficiaries has
29 predeceased the member, the board shall pay the predeceased beneficiary's share to
30 the remaining primary beneficiaries. If any beneficiary survives the member, yet dies
31 before distribution of the beneficiary's share, the beneficiary must be treated as if the

1 beneficiary predeceased the member. If there are no remaining primary beneficiaries,
2 the board shall pay the member's account balance to the contingent beneficiaries in
3 the same manner. If there are no remaining designated beneficiaries, the board shall
4 pay the member's account balance to the member's estate. If the member has not
5 designated an alternate beneficiary or the surviving spouse is the beneficiary, the
6 surviving spouse of the member may select a form of payment as follows:
7 a. If the member was a supreme or district court judge, the surviving spouse may
8 select one of the following optional forms of payment:
9 (1) A lump sum payment of the member's retirement account as of the date of
10 death.
11 (2) Payments as calculated for the deceased member as if the member was of
12 normal retirement age at the date of death, payable until the spouse dies.
13 b. The surviving spouse of all other members may select one of the following
14 options:
15 (1) A lump sum payment of the member's retirement account as of the date of
16 death.
17 (2) Payment of a monthly retirement benefit equal to fifty percent of the
18 deceased member's accrued single life retirement benefits until the spouse
19 dies.
20 (3) If the member dies on or after the member's normal retirement date, the
21 payment of a monthly retirement benefit equal to an amount that would have
22 been paid to the surviving spouse if the member had retired on the day of
23 the member's death and had selected a one hundred percent joint and
24 survivor annuity, payable until the spouse dies. A surviving spouse who
25 received a benefit under this subsection as of July 31, 1995, is entitled to
26 the higher of that person's existing benefit or the equivalent of the accrued
27 benefit available under the one hundred percent joint and survivor provision
28 as if the deceased member were of normal retirement age, with the increase
29 payable beginning August 1, 1995.
30 7. If a member not coming under the provisions of subsection 6 terminates employment
31 because of death, permanent and total disability, or any voluntary or involuntary

reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board automatically shall refund a member's account balance if the member has completed less than three years of eligible employment, has an account balance of less than one thousand dollars, and was not a supreme or district court judge. If the member was a supreme or district court judge, the board automatically shall refund a member's account balance if the member completed less than five years of eligible employment. A member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's account balance remain in the fund.

8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a member receiving retirement benefits or the member's surviving spouse receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate.

9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

   a. Single life.

   b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.

   c. ~~An actuarially equivalent level social security option, which is available only to members who retire prior to attaining the age at which they may begin to receive unreduced social security benefits.~~

   ~~d.~~ Actuarially equivalent life with ten-year or twenty-year certain options.

   ~~e.~~d. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

   ~~f.~~e. An actuarially equivalent graduated benefit option with either a one percent or two percent increase to be applied the first day of January of each year.

Except for supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a single life benefit. For supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension with fifty percent of the benefit continuing for the life of the surviving spouse, if any.

10. The fund may accept rollovers from other eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code.

11. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A) or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).

12. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt rules to implement and administer the accounts and annuities under this section.

SECTION 5. AMENDMENT. Section 54-52-23 of the North Dakota Century Code is amended and reenacted as follows:

54-52-23. Savings clause - Plan modifications.

If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the <u>employee benefits programs</u> committee ~~on public employees retirement programs~~. Any plan modifications made by the board pursuant to this section are effective until the effective date of

any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 6. AMENDMENT. Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

54-52-28. Internal Revenue Code compliance.

The board shall administer the plan in compliance with the following sections of the Internal Revenue Code in effect on August 1, ~~2011~~2013, as it applies for governmental plans.

1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code.
   a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.
   b. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable.
   c. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. The reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan.

2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. A member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment.
3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).
4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee.
5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded.

SECTION 7. AMENDMENT. Section 54-52.3-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.3-03. Employer savings used to defray expenses of administering program - Continuing appropriation.

The office of management and budget shall transfer funds from the savings accruing to the agencies' salaries and wages line item, as a result of the diminution of the state's employer contribution for the Federal Insurance Contribution Act tax, to a payroll clearing account. The office of management and budget shall transfer funds from the payroll clearing account to the board as necessary to defray the reasonable expenses of administering the pretax benefits program established under this chapter, including expenses associated with the program's medical spending account. Any revenue collected by the board from participating district health units must be used, and is hereby appropriated, to defray the expenses of administering the

program. The amount necessary to pay consultants retained by the board, vendors retained by the board to provide claims administration services, any insurance costs associated with the medical spending account, and medical reimbursements for the medical spending account if funds are insufficient to pay claims are hereby appropriated from the savings and revenue generated by the program. All other expenses of administering the program must be paid in accordance with the agency's appropriation authority as established by the legislative assembly. The director of the office of management and budget may decrease or suspend the transfer of the savings accruing to the agencies' salaries and wages line item to the payroll clearing account upon determination that the funds deposited under this section are sufficient to offset anticipated obligations. Notwithstanding other provisions in this section, the public employees retirement system board, or any successor state agency, may not establish, enroll, or administer any pretax benefits program for a political subdivision or any other public or private business or entity, except for any program established specifically for employees of the state and employees of district health units.

SECTION 8. AMENDMENT. Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that person's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant ~~is considered to belong~~ to the deceased participant's refund beneficiary, if any, ~~of that deceased participant~~as provided in this subsection. If ~~a valid nomination of~~the deceased participant designated an alternate refund beneficiary ~~is not on file~~ with the surviving spouse's written consent, the board~~, the board, in a lump sum distribution,~~ shall distribute the accumulated balance to ~~a legal representative, if any, of~~the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries

has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no ~~legal representative~~remaining primary beneficiary, ~~to~~ the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subsection 3(d).

3. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:
   a. A lump sum distribution to the recipient.
   b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
   c. Periodic distributions, as authorized by the board.
   d. No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

   A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in subdivisions a, b, or c if the surviving spouse is the sole refund beneficiary. ~~A~~If the surviving spouse is not the sole refund beneficiary ~~who is not the surviving spouse~~, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than one thousand dollars, the board shall automatically refund the member's vested account balance upon termination of employment. The member may waive the refund if the member

1 submits a written statement to the board, within one hundred twenty days after
2 termination, requesting that the member's vested account balance remain in the plan.
3 **SECTION 9.** A new section to chapter 54-52.6 of the North Dakota Century Code is created
4 and enacted as follows:
5 **Internal Revenue Code compliance.**
6 The board shall administer the plan in compliance with the following sections of the Internal
7 Revenue Code in effect on August 1, 2013, as they apply to governmental plans:
8 1. Section 415, including the defined contribution limitations under section 415(c)(1)(A)
9 and (B) of the Internal Revenue Code and the Treasury Regulations thereunder, which
10 are incorporated herein by reference.
11 a. In accordance with the defined contribution limitations under section 415(c) of the
12 Internal Revenue Code, annual additions (as defined in section 415(c)(2) of the
13 Internal Revenue Code) under this plan may not exceed the limitations set forth
14 in section 415(c)(1)(A) and (B), as adjusted under section 415(d) of the Internal
15 Revenue Code, effective January first of each year following a regular legislative
16 session.
17 b. If a participating member's aggregate annual additions exceed the defined
18 contribution limitations under section 415(c) of the Internal Revenue Code, the
19 member's annual additions must be reduced to the extent necessary to comply
20 with section 415(c) of the Internal Revenue Code and the Treasury Regulations
21 thereunder.
22 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code
23 and the regulations issued under that provision to the extent applicable to
24 governmental plans. Accordingly, benefits must be distributed or begin to be
25 distributed no later than a member's required beginning date, and the required
26 minimum distribution rules override any inconsistent provision of this chapter. A
27 member's required beginning date is April first of the calendar year following the later
28 of the calendar year in which the member attains age seventy and one-half or
29 terminates employment.
30 3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue
31 Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).

1 4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly,
2 a distributee may elect to have an eligible rollover distribution, as defined in section
3 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible
4 retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code,
5 specified by the distributee.
6 5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued,
7 the rights of all affected participating members to accrued retirement benefits under
8 this chapter as of the date of termination or discontinuance is nonforfeitable, to the
9 extent then funded.