

**HOUSE BILL NO.**

Introduced by

Representatives Wald, Grande

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

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

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

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

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

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

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

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

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

27           **54-52.6-02. Election.**

- 28          1. The board shall provide an opportunity for each eligible employee who is a  
29          member of the public employees retirement system on December 31, ~~1999~~ 2001,  
30          to elect in writing to terminate membership in the public employees retirement  
31          system and elect to become a participating member under this chapter. Except as

1 provided in section 54-52.6-03, an election made by an eligible employee under  
2 this section is irrevocable. The board shall accept written elections under this  
3 section from eligible employees during the period beginning on the effective date of  
4 this Act and ending 12:01 a.m. January 1, ~~2000~~ 2002. An eligible employee who  
5 does not make a written election or who does not file the election during the period  
6 specified in this section continues to be a member of the public employees  
7 retirement system. An eligible employee who makes and files a written election  
8 under this section ceases to be a member of the public employees retirement  
9 system effective twelve midnight December 31, ~~1999~~ 2001; becomes a  
10 participating member in the defined contribution retirement plan under this chapter  
11 effective 12:01 a.m. January 1, ~~2000~~ 2002; and waives all of that person's rights to  
12 a pension, annuity, retirement allowance, insurance benefit, or any other benefit  
13 under the public employees retirement system effective December 31, ~~1999~~ 2001.  
14 This section does not affect a person's right to health benefits or retiree health  
15 benefits under chapter 54-52.1. An eligible employee who is first employed and  
16 entered upon the payroll of that person's employer after December 31, ~~1999~~ 2001,  
17 may make an election at any time during the first six months after the date of  
18 employment to participate in the defined contribution retirement plan established  
19 under this chapter.

20 2. If an individual who is a deferred member of the public employees retirement  
21 system on December 31, ~~1999~~ 2001, is reemployed and by virtue of that  
22 employment is again eligible for membership in the public employees retirement  
23 system under chapter 54-52, the individual may elect in writing to remain a  
24 member of the public employees retirement system or if eligible to participate in the  
25 defined contribution retirement plan established under this chapter to terminate  
26 membership in the public employees retirement system and become a participating  
27 member in the defined contribution retirement plan established under this chapter.  
28 An election made by a deferred member under this section is irrevocable. The  
29 board shall accept written elections under this section from a deferred member  
30 during the period beginning on the date of the individual's reemployment and  
31 ending upon the expiration of sixty days after the date of that reemployment. A

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

17 ~~3. An employee who elects to participate in the retirement plan established under this~~  
18 ~~chapter must remain a participant even if that employee returns to the classified~~  
19 ~~service.~~

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

26 ~~5.~~ 4. If the board receives notification from the internal revenue service that this section  
27 or any portion of this section will cause the public employees retirement system or  
28 the retirement plan established under this chapter to be disqualified for tax  
29 purposes under the Internal Revenue Code, then the portion that will cause the  
30 disqualification does not apply.

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

3           **54-52.6-03. Transfer of accumulated fund balances.** For an individual who elects to  
4 terminate membership in the public employees retirement system under chapter 54-52, the  
5 board shall transfer a lump sum amount from the retirement fund to the participating member's  
6 account in the defined contribution retirement plan under this chapter. However, if the  
7 individual terminates employment prior to receiving the lump sum transfer under this section,  
8 the election made under section 54-52.6-02 is ineffective and the individual remains a member  
9 of the public employees retirement system under chapter 54-52 and retains all the rights and  
10 benefits provided under that chapter. The board shall calculate the amount to be transferred for  
11 employees electing to transfer prior to January 1, ~~2000~~ 2002, using the two following formulas,  
12 and shall transfer the greater of the two amounts obtained:

- 13           1. The actuarial present value of the individual's accumulated benefit obligation under  
14           the public employees retirement system based on the assumption that the  
15           individual will retire under the earliest applicable normal retirement age, plus  
16           interest from January 1, ~~2000~~ 2002, to the date of transfer, at the rate of one-half of  
17           one percent less than the actuarial interest assumption at the time of the election;  
18           or
- 19           2. The actual employer and employee contributions made pursuant to sections  
20           54-52-05 and 54-52-06, plus interest at the rate of one-half of one percent less  
21           than the actuarial interest assumption at the time of the election.

22 The board shall calculate the amount to be transferred for persons employed after  
23 December 31, ~~1999~~ 2001, using only the formula contained in subsection 2.