

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

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

1 A BILL for an Act to create and enact a new subsection to section 39-03.1-09 and a new
2 subsection to section 54-52-05 of the North Dakota Century Code, relating to payment of
3 employee contributions under the highway patrolmen's retirement plan and the public
4 employees retirement system; and to amend and reenact sections 21-10-01(1), 39-03.1-08.2,
5 39-03.1-11(8) and (9), 39-03.1-11.2, 54-52-03(4), 54-52-17(6), (8), and (9), 54-52-17.4(6),
6 54-52-28, 54-52.1-03(7), and 54-52.1-03.4 of the North Dakota Century Code, relating to
7 membership of the state investment board, purchase of service credit, member benefit options,
8 Internal Revenue Code compliance, and board elections under the highway patrolmen's
9 retirement plan and the public employees retirement system, and participation and employer
10 payments under the uniform group insurance program.

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

12 **SECTION 1. AMENDMENT.** Section 21-10-01(1) is amended:

13 1. The North Dakota state investment board consists of the governor, the state
14 treasurer, the commissioner of university and school lands, the director of
15 workforce safety and insurance, the insurance commissioner, three members of
16 the teachers' fund for retirement board or the board's designees who need not be
17 members of the fund as selected by that board, ~~and three~~ two of the elected
18 members of the public employees retirement system board as selected by that
19 board, and one member of the public employees retirement system board as
20 selected by that board. The director of workforce safety and insurance may
21 appoint a designee, subject to approval by the workforce safety and insurance
22 board of directors, to attend the meetings, participate, and vote when the director is
23 unable to attend. The teachers' fund for retirement board may appoint an alternate
24 designee with full voting privileges to attend meetings of the state investment board

when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend. The members of the state investment board, except elected and appointed officials and the director of workforce safety and insurance or the director's designee, are entitled to receive as compensation sixty-two dollars and fifty cents per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.

SECTION 2. AMENDMENT. Section 39-03.1-08.2 is amended:

39-03.1-08.2. Purchase of additional service credit.

1. 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 [26 U.S.C. 408].
- ~~2. Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled to purchase additional credit under this section for active employment in the armed forces of the United States, for up to four years of credit, if the contributor is not presently receiving credit for that service. A contributor may not purchase credit under this subsection if the years claimed also qualify for retirement benefits from another retirement system.~~
- ~~3. A contributor may elect to purchase credit for an employer approved leave of absence if the contributor is not presently receiving credit for that absence.~~
4. 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).
3. A contributor may elect to purchase credit for years of service and prior service for which the contributor is not presently receiving credit. A contributor is entitled to

1 purchase additional credit under this section for the following service or prior
2 service, except this service is not eligible for credit if the years claimed also qualify
3 for retirement benefits from another retirement system:

- 4 a. Except as provided in subsection 3 of section 39-03.1-10.1, up to four years of
5 credit for active employment in the armed forces of the United States.
6 b. Employment as a permanent employee by a public employer either within or
7 outside the state.
8 c. Employment as a permanent employee by the federal government.

9 4. A contributor may elect to purchase credit for the following absences for which the
10 participating contributor is not receiving service credit:

- 11 a. Employer-approved leave of absence; and
12 b. Months away from work while participating as a seasonal employee.

13 5. The contributor may purchase credit under this section by paying to the board an
14 amount equal to the actuarial cost to the fund of providing the credit. The board
15 shall adopt rules governing the purchase of additional credit under this section.

16 6. The board may establish individual retirement accounts and individual retirement
17 annuities as permitted under section 408(q) of the Internal Revenue Code to allow
18 employees to make voluntary employee contributions. The board may adopt
19 appropriate rules as may be necessary to implement and administer the accounts
20 and annuities under this section.

21 7. In addition to service credit identified in this section, a contributor may purchase up
22 to ~~five~~ ten years of service credit unrelated to any other eligible service. Up to a
23 maximum of five years of purchased service credit under this subsection will be
24 recognized as service credit for the purpose of computing retirement dates under
25 section 39-03.1-11.

26 8. Pursuant to rules adopted by the board, the board may allow a contributor to
27 purchase service credit with either pretax or aftertax moneys, at the board's
28 discretion. If a contributor elects to purchase service credit using pretax moneys,
29 the requirements and restrictions in subsection 2 of section 39-03.1-09 apply to the
30 purchase arrangement.

31 **SECTION 3.** A new subsection to section 39-03.1-09 is created:

1 For compensation earned after August 1, 2009, all employee contributions required
2 under subsection 1, and not otherwise paid under subsection 2, must be paid by
3 the state in lieu of contributions by the member. All contributions paid by the state
4 under this subsection must be treated as employer contributions in determining tax
5 treatment under this code and the federal Internal Revenue Code. Contributions
6 paid by the state under this subsection may not be included as gross income of the
7 member in determining tax treatment under this code and the Internal Revenue
8 Code until the contributions are distributed or made available. Contributions paid
9 by the state in accordance with this subsection must be treated for the purposes of
10 this chapter in the same manner and to the same extent as member contributions
11 made before the date the contributions were assumed by the state. The state shall
12 pay these member contributions from the same source of funds used in paying
13 compensation to the members. The state shall pay these contributions by effecting
14 an equal cash reduction in the gross salary of the employee. The state shall
15 continue making payments under this section unless otherwise specifically
16 provided for under the agency's biennial appropriation or by law.

17 **SECTION 4. AMENDMENT.** Section 39-03.1-11(8) and (9) is amended:

- 18 8. The surviving spouse of a member receiving retirement benefits must be the
19 member's primary beneficiary unless there is no surviving spouse or the surviving
20 spouse ~~designates~~ consents to the member's designation of an alternate
21 beneficiary in writing. If a contributor receiving retirement benefits, or a
22 contributor's surviving spouse receiving retirement benefits, dies before the total
23 amount of benefits paid to them equals the amount of the contributor's
24 accumulated deductions at retirement, the difference must be paid to the named
25 beneficiary of the recipient or, if there is no named beneficiary, to the recipient's
26 estate.
- 27 9. The board shall adopt rules providing for the receipt of retirement benefits in the
28 following optional forms:
- 29 a. An actuarially equivalent joint and survivor one hundred percent option. A
30 member may designate a subsequent beneficiary upon the death of the
31 original beneficiary or upon a divorce from a spouse beneficiary. If the

member elects to choose a nonspouse beneficiary, subject to any limitation under subsection 8, the nonspouse beneficiary must have a date of birth within ten years of the member's date of birth. An election made under this subdivision is limited to one beneficiary, unless a member is authorized to choose a subsequent beneficiary under this subdivision.

b. An actuarially equivalent life with ten-year or twenty-year certain options.

c. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

d. An actuarial equivalent graduated benefit option with either a one percent or two percent increase.

Unless a contributor requests that the contributor 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 a fifty percent option to the surviving spouse.

SECTION 5. AMENDMENT. Section 39-03.1-11.2 is amended:

39-03.1-11.2. Internal Revenue Code compliance.

1. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2007~~ 2009, as it applies for governmental plans.

2. 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.

3. 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.

4. 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.

SECTION 6. AMENDMENT. Section 54-52-03(4) is amended:

4. Three board members must be elected by and from among the active participating members, members of the retirement plan established under chapter 54-52.6, members of the retirement plan established under chapter 39-03.1, and members of the job service North Dakota retirement plan. Employees who have terminated their employment for whatever reason are not eligible to serve as elected members of the board under this subsection. Board members must be elected to a five-year term pursuant to an election called by the board. Notice of board elections must be given to all active participating members. The time spent in performing duties as a board member may not be charged against any employee's accumulated annual or any other type of leave.

SECTION 7. A new subsection to section 54-52-05 is created:

For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue

Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

SECTION 8. AMENDMENT. Section 54-52-17(6), (8), and (9) is amended:

6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If there are no remaining primary beneficiaries, the board shall pay the member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:
 - a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:

- 1 (1) A lump sum payment of the member's retirement account as of the date
2 of death.
- 3 (2) Payments as calculated for the deceased member as if the member
4 was of normal retirement age at the date of death, payable until the
5 spouse dies.
- 6 b. The surviving spouse of all other members may select one of the following
7 options:
- 8 (1) A lump sum payment of the member's retirement account as of the date
9 of death.
- 10 (2) ~~Payments for sixty months as calculated for the deceased member as if~~
11 ~~the member was of normal retirement age at the date of death.~~
- 12 (3) Payment of a monthly retirement benefit equal to fifty percent of the
13 deceased member's accrued single life retirement benefits until the
14 spouse dies.
- 15 (4) (3) If the member dies on or after the member's normal retirement date, the
16 payment of a monthly retirement benefit equal to an amount that would
17 have been paid to the surviving spouse if the member had retired on
18 the day of the member's death and had selected a one hundred percent
19 joint and survivor annuity, payable until the spouse dies. A surviving
20 spouse who received a benefit under this subsection as of July 31,
21 1995, is entitled to the higher of that person's existing benefit or the
22 equivalent of the accrued benefit available under the one hundred
23 percent joint and survivor provision as if the deceased member were of
24 normal retirement age, with the increase payable beginning August 1,
25 1995.
- 26 8. The surviving spouse of a member receiving retirement benefits must be the
27 member's primary beneficiary unless there is no surviving spouse or the surviving
28 spouse ~~designates~~ consents to the member's designation of an alternate
29 beneficiary in writing. If a member receiving retirement benefits or the member's
30 surviving spouse receiving retirement benefits dies before the total amount of
31 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. A member may designate a subsequent beneficiary upon the death of the original beneficiary or upon a divorce from a spouse beneficiary. If the member elects to choose a nonspouse beneficiary, subject to any limitation under subsection 8, the nonspouse beneficiary must have a date of birth within ten years of the member's date of birth. An election made under this subdivision is limited to one beneficiary, unless a member is authorized to choose a subsequent beneficiary under this subdivision.
- 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. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.
- f. An actuarial equivalent graduated benefit option with either a one percent or two percent increase.

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.

SECTION 9. AMENDMENT. Section 54-52-17.4(6) is amended:

6. In addition to service credit identified in this section, a vested participating member may purchase up to ~~five~~ ten years of service credit unrelated to any other eligible service. Up to a maximum of five years of purchased service credit under this subsection must be recognized as service credit for the purpose of computing retirement dates under section 54-52-17.

SECTION 10. AMENDMENT. Section 54-52-28 is amended:

54-52-28. Internal Revenue Code compliance.

1. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2007~~ 2009, as it applies for governmental plans.
2. 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.
3. 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.
4. 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

1 pro rata between the plans, in proportion to the participating member's service in
2 each plan.

3 **SECTION 11. AMENDMENT.** Section 54-52.1-03(7) is amended:

- 4 7. If the participating employee is a ~~teacher~~ faculty member in a state charitable,
5 penal, or educational institution who receives a salary or wages on ~~a nine-month~~
6 less than a twelve-month basis and has signed a contract to teach for the next
7 ensuing school year, the agency shall make arrangements to include that
8 employee in the insurance program on a twelve-month basis and make the
9 contribution authorized by this section for each month of the twelve-month period.

10 **SECTION 12. AMENDMENT.** Section 54-52.1-03.4 is amended:

11 ~~**54-52.1-03.4. Participation by employees of certain political subdivisions and**~~
12 ~~**temporary Temporary employees and employees on unpaid leave of absence.**~~ An
13 employee of a county, city, school district, district health unit, or park district that is not
14 participating in the uniform group insurance program pursuant to section 54-52.1-03.1 and is
15 not eligible for any other employee group health plan may elect to participate in the uniform
16 group insurance program by completing the necessary enrollment forms and qualifying under
17 the medical underwriting requirements established by the board. The board may use
18 risk-adjusted premiums for individual insurance contracts to implement the provisions of this
19 section allowing employees of a county, city, school district, district health unit, or park district to
20 participate in the uniform group insurance program. The county, city, school district, district
21 health unit, or park district employee participating in the uniform group insurance program under
22 this section shall pay monthly to the board the premiums in effect for the coverage being
23 provided. A temporary employee employed before August 1, 2007, may elect to participate in
24 the uniform group insurance program by completing the necessary enrollment forms and
25 qualifying under the medical underwriting requirements of the program. A temporary employee
26 employed on or after August 1, 2007, is only eligible to participate in the uniform group
27 insurance program if the employee is employed at least twenty hours per week and at least
28 twenty weeks each year of employment. The temporary employee or the temporary
29 employee's employer shall pay monthly to the board the premiums in effect for the coverage
30 being provided. An employer may pay health or life insurance premiums for a permanent

- 1 employee on an unpaid leave of absence. A political subdivision, department, board, or agency
- 2 may make a contribution for coverage under this section.