

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO.

Introduced by

Senator Lyson

1 A BILL for an Act to create and enact chapter 54-52.7 of the North Dakota Century Code,
2 relating to a supplemental defined contribution retirement plan for state correctional and peace
3 officers; to amend and reenact section 54-52-26 of the North Dakota Century Code, relating to
4 confidentiality of records of the public employees retirement system; to provide a penalty; and
5 to provide a continuing appropriation.

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

7 **SECTION 1. AMENDMENT.** Section 54-52-26 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **54-52-26. Confidentiality of records.** All records relating to the retirement benefits of
10 a member or a beneficiary under this chapter, chapter 54-52.2, ~~and~~ chapter 54-52.6, and
11 chapter 54-52.7 are confidential and are not public records. Information and records may be
12 disclosed, under rules adopted by the board, only to:

- 13 1. A person to whom the member has given written consent to have the information
14 disclosed.
- 15 2. A person legally representing the member, upon proper proof of representation,
16 and unless the member specifically withholds consent.
- 17 3. A person authorized by a court order.
- 18 4. A member's participating employer, limited to information concerning the member's
19 years of service credit and years of age. The board may share other types of
20 information as needed by the employer to validate the employer's compliance with
21 existing state or federal laws. Any information provided to the member's
22 participating employer under this subsection must remain confidential except as
23 provided under subsection 6.

- 1 5. The administrative staff of the retirement and investment office for purposes
2 relating to membership and benefits determination.
- 3 6. State or federal agencies for purposes of reporting on a service provider's
4 provision of services or when the employer must supply information to an agency
5 to validate the employer's compliance with existing state or federal laws.
- 6 7. Member interest groups approved by the board on a third-party blind list basis,
7 limited to information concerning the member's participation, name, and address.
- 8 8. The member's spouse or former spouse, that individual's legal representative, and
9 the judge presiding over the member's dissolution proceeding for purposes of
10 aiding the parties in drafting a qualified domestic relations order under section
11 54-52-17.6. The information disclosed under this subsection must be limited to
12 information necessary for drafting the order.
- 13 9. Beneficiaries designated by a participating member or a former participating
14 member to receive benefits after the member's death, but only after the member's
15 death. Information relating to beneficiaries may be disclosed to other beneficiaries
16 of the same member.
- 17 10. The general public, but only after the board has been unable to locate the member
18 for a period in excess of two years, and limited to the member's name and the fact
19 that the board has been unable to locate the member.
- 20 11. Any person if the board determines disclosure is necessary for treatment,
21 operational, or payment purposes, including the completion of necessary
22 documents.
- 23 12. A government child support enforcement agency for purposes of establishing
24 paternity or establishing, modifying, or enforcing a child support obligation of the
25 member.
- 26 13. A person if the information relates to an employer service purchase, but the
27 information must be limited to the member's name and employer, the retirement
28 program in which the member participates, the amount of service credit purchased
29 by the employer, and the total amount expended by the employer for that service
30 credit purchase, and that information may only be obtained from the member's
31 employer.

1 **SECTION 2.** Chapter 54-52.7 of the North Dakota Century Code is created and
2 enacted as follows:

3 **54-52.7-01. Definition of terms.** As used in this chapter, unless the context otherwise
4 requires:

- 5 1. "Board" means the public employees retirement system board.
- 6 2. "Eligible employee" means a member who is:
 - 7 a. Certified by the department of corrections and rehabilitation or the peace
8 officer standards and training board as a correctional officer and is employed
9 by the department of corrections and rehabilitation; or
 - 10 b. A peace officer as defined in section 12-63-01 and is employed as a peace
11 officer by a governmental unit.
- 12 3. "Employee" means any individual employed by the state, whose compensation is
13 paid out of state funds, or funds controlled or administered by the state or paid by
14 the federal government through any of its executive or administrative officials.
- 15 4. "Employer" means the state of North Dakota.
- 16 5. "Governmental unit" means the state of North Dakota, except the highway patrol
17 for members of the retirement plan created under chapter 39-03.1.
- 18 6. "Participating member" means an eligible employee who participates in the
19 supplemental defined contribution retirement plan established under this chapter.
- 20 7. "Permanent employee" means a state employee whose services are not limited in
21 duration and who is filling an approved and regularly funded position and is
22 employed twenty hours or more per week and at least five months each year.
- 23 8. "Salary" means earnings in eligible employment under this chapter reported as
24 salary on a federal income tax withholding statement plus any salary reduction or
25 salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457.
26 "Salary" does not include fringe benefits such as payments for unused sick leave,
27 personal leave, vacation leave paid in a lump sum, overtime, housing allowances,
28 transportation expenses, early retirement, incentive pay, severance pay, medical
29 insurance, workforce safety and insurance benefits, disability insurance premiums
30 or benefits, or salary received by a member in lieu of previously employer-provided
31 fringe benefits under an agreement between an employee and a participating

1 employer. Bonuses may be considered as salary under this section if reported and
2 annualized pursuant to rules adopted by the board.

3 **54-52.7-02. Election.** The board shall provide an opportunity for each eligible
4 employee to elect to become a participating member under this chapter. An election made by
5 an eligible employee under this section is irrevocable.

6 **54-52.7-03. Administration.** The board shall administer the defined contribution
7 retirement plan established under this chapter and the board or vendors contracted for by the
8 board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan.
9 The board has the exclusive authority and responsibility to employ or contract with personnel
10 and for services that the board determines necessary for the proper administration of and
11 investment of assets of the plan, including managerial, professional, legal, clerical, technical,
12 and administrative personnel or services.

13 **54-52.7-04. Direction of investments.** Each participating member shall direct the
14 investment of the individual's accumulated employer and employee contributions and earnings
15 to one or more investment choices within available categories of investment provided by the
16 board.

17 **54-52.7-05. Administrative expenses - Continuing appropriation.** The
18 administrative expenses of the plan must be paid by the participating members in a manner
19 determined by the board. The board or vendors contracted for by the board may charge
20 reasonable administrative expenses and deduct those expenses from a participating member's
21 account in the defined contribution retirement plan established under this chapter. The board
22 shall place any money deducted in an administrative expenses account with the state treasurer.
23 The board may also use funds from the payroll clearing account established pursuant to section
24 54-52.3-03 to pay for consulting expenses. All moneys in the payroll clearing account, not
25 otherwise appropriated, or so much of the moneys as may be necessary, are appropriated to
26 the board on a continuing basis for the purpose of retaining a consultant as required for the
27 administration of this chapter.

28 **54-52.7-06. Participation in other plans.** A participating member may participate in
29 another public sector retirement benefits plan for simultaneous service rendered to the same
30 public sector employer.

31 **54-52.7-07. Contributions - Penalty.**

- 1 1. Each participating member shall contribute monthly two percent of the monthly
2 salary paid to the participant, and this assessment must be deducted from the
3 participant's salary in equal monthly installments commencing with the first month
4 of participation in the supplemental defined contribution retirement plan established
5 under this chapter.
- 6 2. The employer shall contribute an amount equal to three percent of the monthly
7 salary of a participating member. The employer shall pay monthly such
8 contribution into the participating member's account from its funds appropriated for
9 payroll and salary or any other funds available for such purposes. If the employer
10 fails to pay the contributions monthly, the employer is subject to a civil penalty of
11 fifty dollars and, as interest, one percent of the amount due for each month of delay
12 or fraction thereof after the payment became due.
- 13 3. The employer contribution under this chapter ceases:
 - 14 a. The first day of the month next following the month in which the participating
15 member attains the age of sixty; or
 - 16 b. When the participating member has a combined total of years of service credit
17 and years of age equal to eighty-five.

18 **54-52.7-08. Acceptance of rollovers.** The plan may allow a participating member to
19 transfer or roll over funds from other qualified plans into the member's account under rules
20 adopted by the board.

21 **54-52.7-09. Vesting.** A participating member is immediately one hundred percent
22 vested in that member's contributions made to that member's account under this chapter. A
23 participating member vests in the employer contributions made on that member's behalf to an
24 account under this chapter according to the following schedule:

- 25 1. Upon completion of two years of service, fifty percent.
- 26 2. Upon completion of three years of service, seventy-five percent.
- 27 3. Upon completion of four years of service, one hundred percent.

28 A participating member also becomes one hundred percent vested in the employer
29 contributions upon reaching age sixty or when the member has a combined total of years of
30 service credit and years of age equal to eighty-five. Any forfeiture as a result of the failure of a

1 participating member to vest in the employer contribution must be deposited in the
2 administrative expenses account.

3 **54-52.7-10. Forfeiture.** A participating member who continues to be employed as an
4 eligible employee after the first day of the month in which the participating member attains the
5 age of sixty or when the participating member has a combined total of years of service credit
6 and years of age equal to eighty-five forfeits all employer contributions made to the participating
7 member's account under this chapter. Any forfeiture as the result of the operation of this
8 section must be deposited in the general fund.

9 **54-52.7-11. Refund beneficiaries.** A participating or former participating member may
10 nominate one or more individuals as a refund beneficiary by filing written notice of nomination
11 with the board. If the participating member or former participating member is married at the
12 time of the nomination and the participant's spouse is not the refund beneficiary for one
13 hundred percent of the account, the nomination is not effective unless the nomination is signed
14 by the participant's spouse. However, the board may waive this requirement if the spouse's
15 signature cannot be obtained because of extenuating circumstances.

16 **54-52.7-12. Qualified domestic relations orders.**

17 1. The board or a vendor contracted for by the board shall apportion a participating
18 member's account in the supplemental defined contribution retirement plan under
19 this chapter in accordance with the applicable requirements of any qualified
20 domestic relations order. The board shall review a domestic relations order
21 submitted to it to determine if the domestic relations order is qualified under this
22 section and under rules adopted by the board for determining the qualified status of
23 domestic relations orders, administering distributions, and apportioning accounts
24 under the qualified orders. Upon determination of the domestic relations order as
25 qualified, the board shall notify the participating member, the named alternate
26 payee, and the vendor, if applicable, of its receipt of the qualified domestic
27 relations order.

28 2. A "qualified domestic relations order" for purposes of this section means any
29 judgment, decree, or order, including approval of a property settlement agreement,
30 which relates to the provision of child support, spousal support, or marital property
31 rights to a spouse, former spouse, child, or other dependent of a participating

1 member, is made pursuant to a North Dakota domestic relations law, which creates
2 or recognizes the existence of an alternate payee's right to, or assigns to an
3 alternate payee the right to, receive all or a part of a participating member's
4 account in the supplemental defined contribution retirement plan under this
5 chapter. A qualified domestic relations order may not require the board to provide
6 any type or form of benefit, or any option, not otherwise allowed under this chapter.
7 However, a qualified domestic relations order may require distribution from an
8 account in the supplemental defined contribution retirement plan under this chapter
9 notwithstanding that the participating member has not terminated eligible
10 employment. A qualified domestic relations order must specify:
11 a. The name and last-known mailing address of the participating member and
12 the name and the mailing address of each alternate payee covered by the
13 order;
14 b. The amount or percentage of the participating member's account to be paid to
15 each alternate payee;
16 c. The number of payments or period to which the order applies; and
17 d. Each retirement plan to which the order applies.

18 **54-52.7-13. Distributions.**

- 19 1. A participating member is eligible to receive distribution of that person's
20 accumulated balance in the plan upon becoming a former participating member.
21 2. Upon the death of a participating member or former participating member, the
22 accumulated balance of that deceased participant is considered to belong to the
23 refund beneficiary, if any, of that deceased participant. If a valid nomination of
24 refund beneficiary is not on file with the board, the board, in a lump sum
25 distribution, shall distribute the accumulated balance to a legal representative, if
26 any, of the deceased participant or, if there is no legal representative, to the
27 deceased participant's estate.
28 3. A former participating member may elect one or a combination of several of the
29 following methods of distribution of the accumulated balance:
30 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 subdivision a, b, or c. A beneficiary who is not the surviving spouse 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 submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

54-52.7-14. Disability benefits. The board shall allow distribution of the participating member's vested account balance if the board determines that the participating member has become totally and permanently disabled. If approved, the disabled member has the same distribution options as provided in subdivisions a and c of subsection 3 of section 54-52.7-13. However, if the member chooses the periodic distribution option, the member may receive distributions only for as long as the 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 shall discontinue the disability retirement benefit.

54-52.7-15. Board to provide information. The board shall provide information to employees who are eligible to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and

1 investment costs, and coordination of benefits information. Notwithstanding any other provision
2 of law, the board is not liable for any election or investment decision made by an employee
3 based upon information provided to an employee under this chapter.

4 **54-52.7-16. State income tax deductions.** For the purposes of state income tax, the
5 assessment imposed by this chapter on the employee must be treated in accordance with
6 existing state statutes on state income tax.

7 **54-52.7-17. Exemption from state premium tax.** Premiums, consideration for
8 annuities, and membership fees are exempt from premium taxes payable pursuant to section
9 26.1-03-17.

10 **54-52.7-18. Savings clause.** If the board determines that any section of this chapter
11 does not comply with applicable federal statutes or rules, the board shall adopt appropriate
12 terminology with respect to that section as will comply with those federal statutes or rules. Any
13 plan modifications made by the board pursuant to this section are effective until the effective
14 date of any measure enacted by the legislative assembly providing the necessary amendments
15 to this chapter to ensure compliance with the federal statutes or rules.

16 **54-52.7-19. Overpayments.** The board has the right of setoff to recover overpayments
17 made under this chapter and to satisfy any claims arising from embezzlement or fraud
18 committed by a participating member, deferred member, refund beneficiary, or other person
19 who has a claim to a distribution or any other benefit from a plan governed by this chapter.

20 **54-52.7-20. Correction of records.** The board shall correct errors in the records and
21 actions in plans under this chapter and shall seek to recover overpayments and shall seek to
22 collect underpayments.