

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 sections 54-52-14.3 and 54-52-26 of the North Dakota Century  
4 Code, relating to use and investment of public employee retirement funds and confidentiality of  
5 records of the public employees retirement system; to provide a penalty; to provide an  
6 appropriation; and to provide a continuing appropriation.

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

8 **SECTION 1. AMENDMENT.** Section 54-52-14.3 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **54-52-14.3. Public employee retirement funds - Use and investment.** Any Except  
11 for a supplemental defined contribution retirement plan for state correctional and peace officers  
12 under chapter 54-52.7, any provision of law relating to the use and investment of public  
13 employee retirement funds must be deemed a part of the employment contracts of the  
14 employees participating in any public employee retirement system. All moneys from any source  
15 paid into any public employee retirement system fund created by the laws of this state must be  
16 used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of  
17 that system, including the payment of system administrative costs.

18 **SECTION 2. AMENDMENT.** Section 54-52-26 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **54-52-26. Confidentiality of records.** All records relating to the retirement benefits of  
21 a member or a beneficiary under this chapter, chapter 54-52.2, ~~and~~ chapter 54-52.6, and  
22 chapter 54-52.7 are confidential and are not public records. Information and records may be  
23 disclosed, under rules adopted by the board, only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the member specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.
5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.
6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.
7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.
8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 54-52-17.6. The information disclosed under this subsection must be limited to information necessary for drafting the order.
9. Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death. Information relating to beneficiaries may be disclosed to other beneficiaries of the same member.
10. The general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member.

- 1           11. Any person if the board determines disclosure is necessary for treatment,  
2                   operational, or payment purposes, including the completion of necessary  
3                   documents.
- 4           12. A government child support enforcement agency for purposes of establishing  
5                   paternity or establishing, modifying, or enforcing a child support obligation of the  
6                   member.
- 7           13. A person if the information relates to an employer service purchase, but the  
8                   information must be limited to the member's name and employer, the retirement  
9                   program in which the member participates, the amount of service credit purchased  
10                  by the employer, and the total amount expended by the employer for that service  
11                  credit purchase, and that information may only be obtained from the member's  
12                  employer.

13           **SECTION 3.** Chapter 54-52.7 of the North Dakota Century Code is created and  
14 enacted as follows:

15           **54-52.7-01. Definition of terms.** As used in this chapter, unless the context otherwise  
16 requires:

- 17           1. "Board" means the public employees retirement system board.
- 18           2. "Eligible employee" means a member who is:
  - 19           a. Certified by the department of corrections and rehabilitation or the peace  
20                   officer standards and training board as a correctional officer and is employed  
21                   by the department of corrections and rehabilitation; or
  - 22           b. A peace officer as defined in section 12-63-01 and is employed as a peace  
23                   officer by a governmental unit.
- 24           3. "Employee" means any individual employed by the state, whose compensation is  
25                   paid out of state funds, or funds controlled or administered by the state or paid by  
26                   the federal government through any of its executive or administrative officials.
- 27           4. "Employer" means the state of North Dakota.
- 28           5. "Governmental unit" means the state of North Dakota, except the highway patrol  
29                   for members of the retirement plan created under chapter 39-03.1.
- 30           6. "Participating member" means an eligible employee who participates in the  
31                   supplemental defined contribution retirement plan established under this chapter.

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

4           8. "Salary" means earnings in eligible employment under this chapter reported as  
5           salary on a federal income tax withholding statement plus any salary reduction or  
6           salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457.

7           "Salary" does not include fringe benefits such as payments for unused sick leave,  
8           personal leave, vacation leave paid in a lump sum, overtime, housing allowances,  
9           transportation expenses, early retirement, incentive pay, severance pay, medical  
10          insurance, workforce safety and insurance benefits, disability insurance premiums  
11          or benefits, or salary received by a member in lieu of previously employer-provided  
12          fringe benefits under an agreement between an employee and a participating  
13          employer. Bonuses may be considered as salary under this section if reported and  
14          annualized pursuant to rules adopted by the board.

15          **54-52.7-02. Election.** The board shall provide an opportunity for each eligible  
16          employee to elect to become a participating member under this chapter and for each  
17          participating member under this chapter to cease to be a participating member under this  
18          chapter.

19          **54-52.7-03. Administration.** The board shall administer the defined contribution  
20          retirement plan established under this chapter and the board or vendors contracted for by the  
21          board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan.  
22          The board has the exclusive authority and responsibility to employ or contract with personnel  
23          and for services that the board determines necessary for the proper administration of and  
24          investment of assets of the plan, including managerial, professional, legal, clerical, technical,  
25          and administrative personnel or services.

26          **54-52.7-04. Direction of investments.** Each participating member shall direct the  
27          investment of the individual's accumulated employer and employee contributions and earnings  
28          to one or more investment choices within available categories of investment provided by the  
29          board.

30          **54-52.7-05. Administrative expenses - Continuing appropriation.** The  
31          administrative expenses of the plan must be paid by the participating members in a manner

determined by the board. The board or vendors contracted by the board may charge reasonable administrative expenses and deduct those expenses from a participating member's account in the defined contribution retirement plan established under this chapter. The board shall place any money deducted in an administrative expenses account with the state treasurer. The board may also use funds from the payroll clearing account established pursuant to section 54-52.3-03 to pay for consulting expenses. All moneys in the payroll clearing account, not otherwise appropriated, or so much of the moneys as may be necessary, are appropriated to the board on a continuing basis for the purpose of retaining a consultant as required for the administration of this chapter.

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

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

1. Except as otherwise provided in this subsection, each participating member shall contribute monthly two percent of the monthly salary paid to the participant, and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the supplemental defined contribution retirement plan established under this chapter. However, a member's contributions to the deferred compensation plan for public employees under chapter 54-52.2 or other participating employer supplemental Internal Revenue Code section 457 or 403(b) retirement programs as approved by the board must be credited, to the extent made, as the member's contribution under this subsection.
2. The employer shall contribute an amount equal to three percent of the monthly salary of a participating member. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.
3. The employer contribution under this chapter ceases:

- a. The first day of the month next following the month in which the participating member attains the age of sixty-five; or
- b. When the participating member has a combined total of years of service credit and years of age equal to eighty-five.

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

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

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

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

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

**54-52.7-11. Qualified domestic relations orders.**

1. The board or a vendor contracted for by the board shall apportion a participating member's account in the supplemental defined contribution retirement plan under this chapter in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules adopted by the board for determining the qualified status of

domestic relations orders, administering distributions, and apportioning accounts under the qualified orders. Upon determination of the domestic relations order as qualified, the board shall notify the participating member, the named alternate payee, and the vendor, if applicable, of its receipt of the qualified domestic relations order.

2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of a participating member's account in the supplemental defined contribution retirement plan under this chapter. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise allowed under this chapter. However, a qualified domestic relations order may require distribution from an account in the supplemental defined contribution retirement plan under this chapter notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must specify:
  - a. The name and last-known mailing address of the participating member and the name and the mailing address of each alternate payee covered by the order;
  - b. The amount or percentage of the participating member's account to be paid to each alternate payee;
  - c. The number of payments or period to which the order applies; and
  - d. Each retirement plan to which the order applies.

**54-52.7-12. 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 accumulated balance of that deceased participant is considered to belong to the

refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

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 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.

**54-52.7-13. 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 54-52.7-12. 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



1 documentation and undergoes medical testing required by the board, or for as long as the  
2 member participates in a rehabilitation program required by the board, or both. If the board  
3 determines that a member no longer meets the eligibility definition, the board shall discontinue  
4 the disability retirement benefit.

5 **54-52.7-14. Board to provide information.** The board shall provide information to  
6 employees who are eligible to elect to become participating members under this chapter. The  
7 information must include at a minimum the employee's current account balance, the  
8 assumption of investment risk under a defined contribution retirement plan, administrative and  
9 investment costs, and coordination of benefits information. Notwithstanding any other provision  
10 of law, the board is not liable for any election or investment decision made by an employee  
11 based upon information provided to an employee under this chapter.

12 **54-52.7-15. State income tax deductions.** For the purposes of state income tax, the  
13 assessment imposed by this chapter on the employee must be treated in accordance with  
14 existing state statutes on state income tax.

15 **54-52.7-16. Exemption from state premium tax.** Premiums, consideration for  
16 annuities, and membership fees are exempt from premium taxes payable pursuant to section  
17 26.1-03-17.

18 **54-52.7-17. Savings clause.** If the board determines that any section of this chapter  
19 does not comply with applicable federal statutes or rules, the board shall adopt appropriate  
20 terminology with respect to that section as will comply with those federal statutes or rules. Any  
21 plan modifications made by the board pursuant to this section are effective until the effective  
22 date of any measure enacted by the legislative assembly providing the necessary amendments  
23 to this chapter to ensure compliance with the federal statutes or rules.

24 **54-52.7-18. Overpayments.** The board has the right of setoff to recover overpayments  
25 made under this chapter and to satisfy any claims arising from embezzlement or fraud  
26 committed by a participating member, deferred member, refund beneficiary, or other person  
27 who has a claim to a distribution or any other benefit from a plan governed by this chapter.

28 **54-52.7-19. Correction of records.** The board shall correct errors in the records and  
29 actions in plans under this chapter and shall seek to recover overpayments and shall seek to  
30 collect underpayments.

1           **SECTION 4. APPROPRIATION.** The fund provided in this section, or so much of the  
2 funds as may be necessary, are appropriated out of any moneys in the general fund in the state  
3 treasury, not otherwise appropriated, and from special funds derived from federal funds and  
4 other income, to the following agencies for the purpose of funding benefit enhancements  
5 contained in this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011, as  
6 follows:

7 <u>Agency</u>	<u>General Fund</u>	<u>Special Funds</u>	<u>Total</u>
8    Attorney general	\$77,995	\$24,630	\$102,625
9    Highway patrol	2,725	861	3,586
10   Department of corrections			
11    and rehabilitation	1,148,399	80,616	1,229,015
12   Game and fish department	<u>                    </u>	<u>115,909</u>	<u>115,909</u>
13   Total	\$1,229,119	\$222,016	\$1,451,135