

**HOUSE BILL NO.**

Introduced by

Representative Wald

1 A BILL for an Act to create and enact a new section to chapter 15-39.1 and chapter 15-39.3 of  
2 the North Dakota Century Code, relating to a defined contribution retirement plan for teachers;  
3 to amend and reenact sections 15-39.1-09, 15-39.1-30, 39-03.1-02, and 39-03.1-07,  
4 subsection 4 of section 54-52-01, and sections 54-52-02.3, 54-52-02.5, 54-52-02.9, 54-52.6-01,  
5 54-52.6-02, and 54-52.6-09 of the North Dakota Century Code, relating to defined contribution  
6 retirement plans for teachers and state employees; to provide a penalty; and to provide a  
7 continuing appropriation.

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

9 **SECTION 1.** A new section to chapter 15-39.1 of the North Dakota Century Code is  
10 created and enacted as follows:

11 **Teachers' fund for retirement closed to new members.** Notwithstanding any other  
12 provision of law, after July 31, 2011, the teachers' fund for retirement plan established under  
13 this chapter is closed to new members.

14 **SECTION 2. AMENDMENT.** Section 15-39.1-09 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **15-39.1-09. Membership in fund and assessments - Employer payment of**  
17 **employee contribution.**

18 1. Except as otherwise provided by law, every teacher first employed before  
19 August 1, 2011, is a member of the fund and must be assessed upon the teacher's  
20 salary seven and seventy-five hundredths percent per annum, which must be  
21 deducted, certified, and paid monthly to the fund by the disbursing official of the  
22 governmental body by which the teacher is employed. Except as otherwise  
23 provided by law, every governmental body employing a teacher shall pay to the  
24 fund eight and seventy-five hundredths percent per annum of the salary of each

- 1 teacher employed by it. The disbursing official of the governmental body shall  
2 certify the governmental body payments and remit the payments monthly to the  
3 fund.
- 4 2. Each employer, at its option, may pay the teacher contributions required by  
5 subsection 1 for all compensation earned after June 30, 1983. The amount paid  
6 must be paid by the employer in lieu of contributions by the employee. If an  
7 employer decides not to pay the contributions, the amount that would have been  
8 paid will continue to be deducted from compensation. If contributions are paid by  
9 the employer, they must be treated as employer contributions in determining  
10 income tax treatment under this code and the federal Internal Revenue Code. If  
11 contributions are paid by the employer, they may not be included as gross income  
12 of the teacher in determining tax treatment under this code and the Internal  
13 Revenue Code until they are distributed or made available. The employer shall  
14 pay these teacher contributions from the same source of funds used in paying  
15 compensation to the teachers. The employer shall pay these contributions by  
16 effecting an equal cash reduction in the gross salary of the employee or by an  
17 offset against future salary increases. If teacher contributions are paid by the  
18 employer, they must be treated for the purposes of this chapter in the same  
19 manner and to the same extent as teacher contributions made prior to the date the  
20 contributions were assumed by the employer. The option given employers by this  
21 subsection must be exercised in accordance with rules adopted by the board.
- 22 3. A person, except the superintendent of public instruction, who is certified to teach  
23 in this state by the education standards and practices board and who is first  
24 employed and entered upon the payroll of the superintendent of public instruction  
25 after January 6, 2001, and before August 1, 2011, may elect to become a  
26 participating member of the public employees retirement system. An election  
27 made by a person to participate in the public employees retirement system under  
28 this subsection is irrevocable. Nonteaching employees of the superintendent of  
29 public instruction, including the superintendent of public instruction, may elect to  
30 transfer to the public employees retirement system before August 1, 2011,  
31 pursuant to section 54-52-02.13. Employees of the state board for career and

1 technical education may elect to transfer to the public employees retirement  
2 system before August 1, 2011, pursuant to section 54-52-02.14.

3 4. An individual who is first employed and entered upon the payroll of the state board  
4 for career and technical education after July 1, 2007, may elect to become a  
5 participating member of the public employees retirement system. An election  
6 made by an individual to participate in the public employees retirement system  
7 under this subsection is irrevocable.

8 **SECTION 3. AMENDMENT.** Section 15-39.1-30 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **15-39.1-30. Confidentiality of records.** All records relating to the retirement benefits  
11 of a member or a beneficiary under this chapter and chapter 15-39.3 are confidential and are  
12 not public records. The information and records may be disclosed, under rules adopted by the  
13 board, only to:

- 14 1. A person to whom the teacher has given written consent to have the information  
15 disclosed.
- 16 2. A person legally representing the teacher, upon proper proof of representation, and  
17 unless the teacher specifically withholds consent.
- 18 3. A person authorized by a court order.
- 19 4. A member's participating employer, limited to information concerning the member's  
20 years of service credit, years of age, employer and employee contribution  
21 amounts, and salary. The board may share other types of information as needed  
22 by the employer to validate the employer's compliance with existing state or federal  
23 law. Any information provided to the member's participating employer under this  
24 subsection must remain confidential except as provided in subsection 6.
- 25 5. The administrative staff of the public employees retirement system for purposes  
26 relating to membership and benefits determination.
- 27 6. State or federal agencies for the purpose of validating member eligibility or  
28 employer compliance with existing state or federal law.
- 29 7. Member interest groups approved by the board, limited to information concerning  
30 the member's death.

- 1           8.    A government child support enforcement agency for purposes of establishing
- 2                    paternity or establishing, modifying, or enforcing a child support obligation of the
- 3                    member.
- 4           9.    The member's spouse or former spouse, that individual's legal representative, and
- 5                    the judge presiding over the member's dissolution proceeding for purposes of
- 6                    aiding the parties in drafting a qualified domestic relations order under section
- 7                    15-39.1-12.2. The information disclosed under this subsection must be limited to
- 8                    information necessary for drafting the order.
- 9           10.   Beneficiaries designated by a participating member or a former participating
- 10                   member to receive benefits after the member's death, but only after the member's
- 11                   death. Information relating to beneficiaries may be disclosed to other beneficiaries
- 12                   of the same member.
- 13           11.   The general public, but only after the board has been unable to locate the member
- 14                   for a period in excess of two years, and limited to the member's name and the fact
- 15                   that the board has been unable to locate the member.
- 16           12.   Any person if the board determines disclosure is necessary for treatment,
- 17                   operational, or payment purposes, including the completion of necessary
- 18                   documents.
- 19           13.   A person if the information relates to an employer service purchase, but the
- 20                   information must be limited to the member's name and employer, the retirement
- 21                   program in which the member participates, the amount of service credit purchased
- 22                   by the employer, and the total amount expended by the employer for that service
- 23                   credit purchase. Information identified under this subsection may only be obtained
- 24                   from the member's employer.

25           **SECTION 4.** Chapter 15-39.3 of the North Dakota Century Code is created and  
26 enacted as follows:

27           **15-39.3-01. Definition of terms.** As used in this chapter, unless the context otherwise  
28 requires:

- 29           1.    "Board" means the board of trustees of the teachers' fund for retirement.
- 30           2.    "Eligible employee" means a teacher.
- 31           3.    "Employer" means a governmental body employing a teacher.

- 1           4. "Participating member" means an eligible employee participating in the defined  
2           contribution retirement plan established under this chapter.
- 3           5. "Salary" means a member's earnings in eligible employment under this chapter for  
4           teaching, supervisory, administrative, and extracurricular services during a school  
5           year reported as salary on the member's federal income tax withholding  
6           statements plus any salary reduction or salary deferral amounts under 26 U.S.C.  
7           125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, 2011. "Salary"  
8           includes bonus amounts paid to members for performance, retention, experience,  
9           and other service-related bonuses, unless amounts are conditioned on or made in  
10          anticipation of an individual member's retirement or termination. The annual salary  
11          of each member taken into account in determining benefit accruals and  
12          contributions may not exceed the annual compensation limits established under  
13          26 U.S.C. 401(a)(17)(B) in effect on August 1, 2011, as adjusted for increases in  
14          the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1,  
15          2011. "Salary" does not include:
- 16          a. Fringe benefits or side, nonwage, benefits that accompany or are in addition  
17          to a member's employment, including insurance programs, annuities,  
18          transportation allowances, housing allowances, meals, lodging, or expense  
19          allowances, or other benefits provided by a member's employer.
- 20          b. Insurance programs, including medical, dental, vision, disability, life, long-term  
21          care, workforce safety and insurance, or other insurance premiums or  
22          benefits.
- 23          c. Payments for unused sick leave, personal leave, vacation leave, or other  
24          unused leave.
- 25          d. Early retirement incentive pay, severance pay, or other payments conditioned  
26          on or made in anticipation of retirement or termination.
- 27          e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- 28          f. Amounts received by a member in lieu of previously employer-provided  
29          benefits or payments that are made on an individual selection basis.
- 30          g. Recruitment bonuses.

1           h. Other benefits or payments not defined in subdivisions a through g which the  
2           board determines to be ineligible teachers' fund for retirement salary.

3           6. "Teacher" means:

4           a. Every person licensed by the education standards and practices board who is  
5           contractually employed in teaching, supervisory, administrative, or  
6           extracurricular services by a state institution, multidistrict special education  
7           unit, area career and technology center, regional education association,  
8           school board, or other governing body of a school district of this state,  
9           including superintendent, assistant superintendent, business manager,  
10           principal, assistant principal, and special teacher. For purposes of this  
11           subdivision, "teacher" includes a person contractually employed by one of the  
12           above employers to provide teaching, supervisory, administrative, or  
13           extracurricular services to a separate state institution, state agency,  
14           multidistrict special education unit, area career and technology center,  
15           regional education association, school board, or other governing body of a  
16           school district of this state under a third-party contract.

17           b. The superintendent of public instruction, every assistant superintendent of  
18           public instruction, every county superintendent, every assistant  
19           superintendent, every supervisor of instruction, the professional staff of the  
20           department of career and technical education, the professional staff of the  
21           center for distance education, and the professional staff of an interim school  
22           district.

23           **15-39.3-02. Members.** An eligible employee who is first employed and entered upon  
24           the payroll of that individual's employer after July 31, 2011, is a member of the defined  
25           contribution retirement plan established under this chapter.

26           **15-39.3-03. Administration.** The board shall administer the defined contribution  
27           retirement plan established under this chapter and the board or vendors contracted for by the  
28           board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan.  
29           The board has the exclusive authority and responsibility to employ or contract with personnel  
30           and for services that the board determines necessary for the proper administration of and

1 investment of assets of the plan, including managerial, professional, legal, clerical, technical,  
2 and administrative personnel or services.

3 **15-39.3-04. Direction of investments.** Each participating member shall direct the  
4 investment of the individual's accumulated employer and employee contributions and earnings  
5 to one or more investment choices within available categories of investment provided by the  
6 board.

7 **15-39.3-05. Administrative expenses - Continuing appropriation.** The  
8 administrative expenses of the plan must be paid by the participating members in a manner  
9 determined by the board. The board or vendors contracted for by the board may charge  
10 reasonable administrative expenses and deduct those expenses from a participating member's  
11 account in the defined contribution retirement plan established under this chapter. The board  
12 shall place any money deducted in an administrative expenses account with the state treasurer.  
13 All moneys in the administrative expenses account, not otherwise appropriated, or so much of  
14 the moneys as may be necessary, are appropriated to the board on a continuing basis for the  
15 purpose of retaining a consultant as required for the administration of this chapter.

16 **15-39.3-06. Participation in other plans.** A participating member may not participate  
17 in any other public sector retirement benefits plan for simultaneous service rendered to the  
18 same public sector employer. However, this section does not prohibit a participating member  
19 from participating in a retirement plan established by this state or other public sector employer  
20 under the federal Internal Revenue Code.

21 **15-39.3-07. Contributions - Penalty.**

22 1. Each participating member must be assessed upon the teacher's salary seven and  
23 seventy-five hundredths percent per annum, which must be deducted, certified,  
24 and paid monthly to the participating member's account by the disbursing official of  
25 the governmental body by which the teacher is employed.

26 2. Every governmental body employing a teacher shall pay to the participating  
27 member's account eight and seventy-five hundredths percent per annum of the  
28 salary of each teacher employed by it. The disbursing official of the governmental  
29 body shall certify the governmental body payments and remit the payments  
30 monthly to the participating member's account.

1           3. Each employer, at its option, may pay the teacher contributions required by  
2           subsection 1 for all compensation earned after July 31, 2011. The amount paid  
3           must be paid by the employer in lieu of contributions by the employee. If an  
4           employer decides not to pay the contributions, the amount that would have been  
5           paid will continue to be deducted from compensation. If contributions are paid by  
6           the employer, they must be treated as employer contributions in determining  
7           income tax treatment under this code and the federal Internal Revenue Code. If  
8           contributions are paid by the employer, they may not be included as gross income  
9           of the teacher in determining tax treatment under this code and the Internal  
10          Revenue Code until they are distributed or made available. The employer shall  
11          pay these contributions from the same source of funds used in paying  
12          compensation to the teachers. The employer shall pay these contributions by  
13          effecting an equal cash reduction in the gross salary of the employee or by an  
14          offset against future salary increases. If teacher contributions are paid by the  
15          employer, they must be treated for the purposes of this chapter in the same  
16          manner and to the same extent as teacher contributions made prior to the date the  
17          contributions were assumed by the employer. The option given employers by this  
18          subsection must be exercised in accordance with rules adopted by the board.

19          **15-39.3-08. Acceptance of rollovers.** The plan may allow a participating member to  
20          transfer or roll over funds from other qualified plans into the member's account under rules  
21          adopted by the board.

22          **15-39.3-09. Military service under the Uniformed Services Employment and**  
23          **Reemployment Rights Act - Member retirement credit.** A member reemployed under the  
24          Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L.  
25          103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the  
26          period of qualified military service. The required contribution for the credit must be made in the  
27          same manner and by the same party as would have been made had the employee been  
28          continuously employed. If the salary the member would have received during the period of  
29          service is not reasonably certain, the member's average rate of compensation during the  
30          twelve-month period immediately preceding the member's period of service or, if shorter, the  
31          period of employment immediately preceding that period, times the number of months of credit



1 being purchased must be used. A member must be allowed up to three times the period of  
2 military service or five years, whichever is less, to make any required payments. This provision  
3 applies to all qualifying periods of military service since October 1, 1994. Any payments made  
4 by the member to receive qualifying credit inconsistent with this provision must be refunded. An  
5 employee shall make application to the employer for credit and provide a DD Form 214 to verify  
6 service.

7 **15-39.3-10. Vesting.** A participating member is immediately one hundred percent  
8 vested in that member's contributions made to that member's account under this chapter. A  
9 participating member vests in the employer contributions made on that member's behalf to an  
10 account under this chapter according to the following schedule:

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

14 A participating member also becomes one hundred percent vested in the employer  
15 contributions upon reaching age sixty-five. Any forfeiture as a result of the failure of a  
16 participating member to vest in the employer contribution must be deposited in the  
17 administrative expenses account.

18 **15-39.3-11. Refund beneficiaries.** A participating or former participating member may  
19 nominate one or more individuals as a refund beneficiary by filing written notice of nomination  
20 with the board. If the participating member or former participating member is married at the  
21 time of the nomination and the participant's spouse is not the refund beneficiary for one  
22 hundred percent of the account, the nomination is not effective unless the nomination is signed  
23 by the participant's spouse. However, the board may waive this requirement if the spouse's  
24 signature cannot be obtained because of extenuating circumstances.

25 **15-39.3-12. Qualified domestic relations orders.**

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

- 1           relations orders, administering distributions, and apportioning accounts under the  
2           qualified orders. Upon determination of the domestic relations order as qualified,  
3           the board shall notify the participating member, the named alternate payee, and  
4           the vendor, if applicable, of its receipt of the qualified domestic relations order.
- 5           2. A "qualified domestic relations order" for purposes of this section means any  
6           judgment, decree, or order, including approval of a property settlement agreement,  
7           which relates to the provision of child support, spousal support, or marital property  
8           rights to a spouse, former spouse, child, or other dependent of a participating  
9           member, is made pursuant to a North Dakota domestic relations law, which creates  
10           or recognizes the existence of an alternate payee's right to, or assigns to an  
11           alternate payee the right to, receive all or a part of a participating member's  
12           account in the defined contribution retirement plan under this chapter. A qualified  
13           domestic relations order may not require the board to provide any type or form of  
14           benefit, or any option, not otherwise allowed under this chapter. However, a  
15           qualified domestic relations order may require distribution from an account in the  
16           defined contribution retirement plan under this chapter notwithstanding that the  
17           participating member has not terminated eligible employment. A qualified domestic  
18           relations order must specify:
- 19           a. The name and last-known mailing address of the participating member and  
20           the name and the mailing address of each alternate payee covered by the  
21           order;
- 22           b. The amount or percentage of the participating member's account to be paid to  
23           each alternate payee;
- 24           c. The number of payments or period to which the order applies; and  
25           d. Each retirement plan to which the order applies.

26           **15-39.3-13. Distributions.**

- 27           1. A participating member is eligible to receive distribution of that member's  
28           accumulated balance in the plan upon becoming a former participating member.
- 29           2. Upon the death of a participating member or former participating member, the  
30           accumulated balance of that deceased participant is considered to belong to the  
31           refund beneficiary, if any, of that deceased participant. If a valid nomination of

- 1           refund beneficiary is not on file with the board, the board, in a lump sum  
2           distribution, shall distribute the accumulated balance to a legal representative, if  
3           any, of the deceased participant or, if there is no legal representative, to the  
4           deceased participant's estate.
- 5           3. A former participating member may elect one or a combination of several of the  
6           following methods of distribution of the accumulated balance:
- 7           a. A lump sum distribution to the recipient.  
8           b. A lump sum direct rollover to another qualified plan, to the extent allowed by  
9           federal law.
- 10           c. Periodic distributions, as authorized by the board.  
11           d. No current distribution, in which case the accumulated balance must remain in  
12           the plan until the former participating member or refund beneficiary elects a  
13           method or methods of distribution under this section, to the extent allowed by  
14           federal law.

15           A surviving spouse beneficiary may elect one or a combination of several of the  
16           methods of distribution provided in subdivision a, b, or c. A beneficiary who is not  
17           the surviving spouse may only choose a lump sum distribution of the accumulated  
18           balance.

- 19           4. If the former participating member's vested account balance is less than one  
20           thousand dollars, the board shall automatically refund the member's vested  
21           account balance upon termination of employment. The member may waive the  
22           refund if the member submits a written statement to the board, within one hundred  
23           twenty days after termination, requesting that the member's vested account  
24           balance remain in the plan.

25           **15-39.3-14. Disability benefits.** The board shall allow distribution of the participating  
26           member's vested account balance if the board determines that the participating member has  
27           become totally and permanently disabled. If approved, the disabled member has the same  
28           distribution options as provided in subdivisions a and c of subsection 3 of section 15-39.3-13.  
29           However, if the member chooses the periodic distribution option, the member may receive  
30           distributions only for as long as the disability continues and the member submits the necessary  
31           documentation and undergoes medical testing required by the board, or for as long as the

1 member participates in a rehabilitation program required by the board, or both. If the board  
2 determines that a member no longer meets the eligibility definition, the board shall discontinue  
3 the disability retirement benefit.

4 **15-39.3-15. Board to provide information.** The board shall provide information to  
5 participating members under this chapter. The information must include at a minimum the  
6 employee's current account balance, administrative and investment costs, and coordination of  
7 benefits information. Notwithstanding any other provision of law, the board is not liable for any  
8 investment decision made by an employee based upon information provided to an employee  
9 under this chapter.

10 **15-39.3-16. State income tax deductions.** For the purposes of state income tax, the  
11 assessment imposed by this chapter on the employee must be treated in accordance with  
12 existing state statutes on state income tax.

13 **15-39.3-17. Exemption from state premium tax.** Premiums, consideration for  
14 annuities, and membership fees are exempt from premium taxes payable pursuant to section  
15 26.1-03-17.

16 **15-39.3-18. Savings clause.** If the board determines that any section of this chapter  
17 does not comply with applicable federal statutes or rules, the board shall adopt appropriate  
18 terminology with respect to that section as will comply with those federal statutes or rules. Any  
19 plan modifications made by the board pursuant to this section are effective until the effective  
20 date of any measure enacted by the legislative assembly providing the necessary amendments  
21 to this chapter to ensure compliance with the federal statutes or rules.

22 **15-39.3-19. Overpayments.** The board has the right of setoff to recover overpayments  
23 made under this chapter and to satisfy any claims arising from embezzlement or fraud  
24 committed by a participating member, refund beneficiary, or other person who has a claim to a  
25 distribution or any other benefit from a plan governed by this chapter.

26 **15-39.3-20. Correction of records.** The board shall correct errors in the records and  
27 actions in plans under this chapter and shall seek to recover overpayments and shall seek to  
28 collect underpayments.

29 **SECTION 5. AMENDMENT.** Section 39-03.1-02 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **39-03.1-02. North Dakota highway patrolmen's retirement system.** A retirement  
2 system is hereby established for the members of the North Dakota highway patrol.  
3 Notwithstanding any other provision of law, after July 31, 2011, the North Dakota highway  
4 patrolmen's retirement system is closed to new members.

5           **SECTION 6. AMENDMENT.** Section 39-03.1-07 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **39-03.1-07. Membership.** Except as otherwise provided, each member of the patrol,  
8 including the superintendent and assistant superintendent, first employed before August 1,  
9 2011, shall contribute to the fund, and is eligible to nominate and vote for members of the  
10 board. Personnel of the truck regulatory division of the state highway department transferred to  
11 the highway patrol after July 1, 1983, are not required to contribute to the fund. They are  
12 members of the public employees retirement system and social security system.

13           **SECTION 7. AMENDMENT.** Subsection 4 of section 54-52-01 of the North Dakota  
14 Century Code is amended and reenacted as follows:

15           4. "Eligible employee" means all permanent employees who, except for employees of  
16 a political subdivision or employees of the board of higher education and state  
17 institutions under the jurisdiction of the board, are first employed before August 1,  
18 2011, and who meet all of the eligibility requirements set by this chapter and who  
19 are eighteen years or more of age, and includes appointive and elective officials  
20 under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching  
21 employees of the superintendent of public instruction, including the superintendent  
22 of public instruction, who elect to transfer from the teachers' fund for retirement to  
23 the public employees retirement system under section 54-52-02.13, and  
24 employees of the state board for career and technical education who elect to  
25 transfer from the teachers' fund for retirement to the public employees retirement  
26 system under section 54-52-02.14. Eligible employee does not include  
27 nonclassified state employees who elect to become members of the retirement  
28 plan established under chapter 54-52.6 but does include employees of the judicial  
29 branch first employed before August 1, 2011, employees of a political subdivision,  
30 and employees of the board of higher education and state institutions under the  
31 jurisdiction of the board.

1           **SECTION 8. AMENDMENT.** Section 54-52-02.3 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **54-52-02.3. Newly elected supreme and district court judges.** After July 1, 1973,  
4 ~~any person~~ and before August 1, 2011, an individual elected or appointed to the office of judge  
5 of the supreme court or judge of the district court for the first time must, from and after the date  
6 that ~~person~~ individual qualifies and takes office, be a participating member of the public  
7 employees retirement system under this chapter. ~~Any person~~ An individual so elected or  
8 appointed is not eligible for membership in or for receipt of benefits from the retirement program  
9 provided by chapter 27-17. After August 1, 2011, an individual elected or appointed to the  
10 office of judge of the supreme court or judge of the district court for the first time must, from and  
11 after the date that individual qualifies and takes office, be a participating member of the  
12 retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the  
13 first time" means ~~a person~~ an individual elected or appointed, who, after July 1, 1973, does not  
14 hold office as a judge of the supreme court or the district court at the time of the ~~person's~~  
15 individual's election or appointment.

16           **SECTION 9. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **54-52-02.5. Newly elected and appointed state officials.** After December 31, 1999,  
19 ~~a person~~ and before August 1, 2011, an individual elected or appointed to a state office for the  
20 first time must, from and after the date that ~~person~~ individual qualifies and takes office, be a  
21 participating member of the public employees retirement system unless that ~~person~~ individual  
22 makes an election at any time during the first six months after the date the ~~person~~ individual  
23 takes office to participate in the retirement plan established under chapter 54-52.6. After  
24 July 31, 2011, an individual elected or appointed to a state office for the first time must, from  
25 and after the date that individual qualifies and takes office, be a participating member of the  
26 retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the  
27 first time" means ~~a person~~ an individual appointed, who, after December 31, 1999, does not  
28 hold office as an appointed official at the time of that ~~person's~~ individual's appointment.

29           **SECTION 10. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **54-52-02.9. Participation by temporary employees.** A Before August 1, 2011, a  
2 temporary employee may elect, within one hundred eighty days of beginning employment, to  
3 participate in the public employees retirement system under this chapter and receive credit for  
4 service after enrollment. After July 31, 2011, a temporary employee may elect, within one  
5 hundred eighty days of beginning employment, to participate in the retirement plan established  
6 under chapter 54-52.6. The temporary employee shall pay monthly to the fund an amount  
7 equal to eight and twelve-hundredths percent times the temporary employee's present monthly  
8 salary. The temporary employee shall also pay the required monthly contribution to the retiree  
9 health benefit fund established under section 54-52.1-03.2. This contribution must be recorded  
10 as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the  
11 temporary employee's contributions. A temporary employee may continue to participate as a  
12 temporary employee in the public employees retirement system until termination of employment  
13 or reclassification of the temporary employee as a permanent employee. A temporary  
14 employee may not purchase any additional credit, including additional credit under section  
15 54-52-17.4 or past service under section 54-52-02.6.

16           **SECTION 11. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise  
19 requires:

- 20           1. "Board" means the public employees retirement system board.
- 21           2. "Deferred member" means a person who elected to receive deferred vested  
22 retirement benefits under chapter 54-52.
- 23           3. "Eligible employee" means a permanent state employee, except an employee of  
24 the ~~judicial branch or an employee of the~~ board of higher education and state  
25 institutions under the jurisdiction of the board, who is eighteen years or more of  
26 age and ~~who is in a position not classified by North Dakota human resource~~  
27 ~~management services~~ temporary employees who elect to participate after July 31,  
28 2011, in the retirement plan established under this chapter. If a participating  
29 member loses permanent employee status and becomes a temporary employee,  
30 the member may still participate in the defined contribution retirement plan.

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

23           **SECTION 12. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25           **54-52.6-02. Election.**

- 26           1. The board shall provide an opportunity for each eligible employee who is a  
27           member of the public employees retirement system on September 30, 2001, and  
28           who has not made a written election under this section to transfer to the defined  
29           contribution retirement plan before October 1, 2001, to elect in writing to terminate  
30           membership in the public employees retirement system and elect to become a  
31           participating member under this chapter. Except as provided in section



1           54-52.6-03, an election made by an eligible employee under this section is  
2           irrevocable. The board shall accept written elections under this section from  
3           eligible employees during the period beginning on July 1, 1999, and ending  
4           12:01 a.m. December 14, 2001. An eligible employee who does not make a  
5           written election or who does not file the election during the period specified in this  
6           section continues to be a member of the public employees retirement system. An  
7           eligible employee who makes and files a written election under this section ceases  
8           to be a member of the public employees retirement system effective twelve  
9           midnight December 31, 2001; becomes a participating member in the defined  
10          contribution retirement plan under this chapter effective 12:01 a.m. January 1,  
11          2002; and waives all of that person's rights to a pension, annuity, retirement  
12          allowance, insurance benefit, or any other benefit under the public employees  
13          retirement system effective December 31, 2001. This section does not affect a  
14          person's right to health benefits or retiree health benefits under chapter 54-52.1.  
15          An eligible employee who is first employed and entered upon the payroll of that  
16          person's employer after September 30, 2001, and before August 1, 2011, may  
17          make an election to participate in the defined contribution retirement plan  
18          established under this chapter at any time during the first six months after the date  
19          of employment. If the board, in its sole discretion, determines that the employee  
20          was not adequately notified of the employee's option to participate in the defined  
21          contribution retirement plan, the board may provide the employee a reasonable  
22          time within which to make that election, which may extend beyond the original  
23          six-month decision window.

24          2. If an individual who is a deferred member of the public employees retirement  
25          system on September 30, 2001, is reemployed and by virtue of that employment is  
26          again eligible for membership in the public employees retirement system under  
27          chapter 54-52, the individual may elect in writing to remain a member of the public  
28          employees retirement system or if eligible to participate in the defined contribution  
29          retirement plan established under this chapter to terminate membership in the  
30          public employees retirement system and become a participating member in the  
31          defined contribution retirement plan established under this chapter. An election

1           made by a deferred member under this section is irrevocable. The board shall  
2           accept written elections under this section from a deferred member during the  
3           period beginning on the date of the individual's reemployment and ending upon the  
4           expiration of six months after the date of that reemployment. If the board, in its  
5           sole discretion, determines that the employee was not adequately notified of the  
6           employee's option to participate in the defined contribution retirement plan, the  
7           board may provide the employee a reasonable time within which to make that  
8           election, which may extend beyond the original six-month decision window. A  
9           deferred member who makes and files a written election to remain a member of the  
10          public employees retirement system retains all rights and is subject to all conditions  
11          as a member of that retirement system. A deferred member who does not make a  
12          written election or who does not file the election during the period specified in this  
13          section continues to be a member of the public employees retirement system. A  
14          deferred member who makes and files a written election to terminate membership  
15          in the public employees retirement system ceases to be a member of the public  
16          employees retirement system effective on the last day of the payroll period that  
17          includes the date of the election; becomes a participating member in the defined  
18          contribution retirement plan under this chapter effective the first day of the payroll  
19          immediately following the date of the election; and waives all of that person's rights  
20          to a pension, an annuity, a retirement allowance, insurance benefit, or any other  
21          benefit under the public employees retirement system effective the last day of the  
22          payroll that includes the date of the election. This section does not affect any right  
23          to health benefits or retiree health benefits to which the deferred member may  
24          otherwise be entitled.

25          3. An eligible employee who elects to participate in the retirement plan established  
26          under this chapter must remain a participant even if that employee returns to the  
27          classified service or becomes employed by a political subdivision that participates  
28          in the public employees retirement system. The contribution amount must be as  
29          provided in this chapter, regardless of the position in which the employee is  
30          employed. Notwithstanding the irrevocability provisions of this chapter, if a  
31          member who elects to participate in the retirement plan established under this

1           chapter becomes a ~~supreme or district court judge, becomes a member of the~~  
2           ~~highway patrol, becomes~~ employed in a position subject to teachers' fund for  
3           retirement membership, or becomes an employee of the board of higher education  
4           or state institution under the jurisdiction of the board who is eligible to participate in  
5           an alternative retirement program established under subsection 6 of section  
6           15-10-17, the member's status as a member of the defined contribution retirement  
7           plan is suspended, and the member becomes a new member of the retirement  
8           plan for which that member's new position is eligible. The member's account  
9           balance remains in the defined contribution retirement plan, but no new  
10          contributions may be made to that account. The member's service credit and  
11          salary history that were forfeited as a result of the member's transfer to the defined  
12          contribution retirement plan remain forfeited, and service credit accumulation in the  
13          new retirement plan begins from the first day of employment in the new position. If  
14          the member later returns to employment that is eligible for the defined contribution  
15          plan, the member's suspension must be terminated, the member again becomes a  
16          member of the defined contribution retirement plan, and the member's account  
17          resumes accepting contributions. At the member's option, and pursuant to rules  
18          adopted by the board, the member may transfer any available balance as  
19          determined by the provisions of the alternate retirement plan into the member's  
20          account under this chapter.

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

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

- 1           6. A participating member who becomes a temporary employee may still participate in  
2           the defined contribution retirement plan upon filing an election with the board within  
3           one hundred eighty days of transferring to temporary employee status. The  
4           participating member may not become a member of the defined benefit plan as a  
5           temporary employee. The temporary employee electing to participate in the  
6           defined contribution retirement plan shall pay monthly to the fund an amount equal  
7           to eight and twelve-hundredths percent times the temporary employee's present  
8           monthly salary. The temporary employee shall also pay the required monthly  
9           contribution to the retiree health benefit fund established under section  
10          54-52.1-03.2. This contribution must be recorded as a member contribution  
11          pursuant to section 54-52.1-03.2. An employer may not pay the temporary  
12          employee's contributions. A temporary employee may continue to participate as a  
13          temporary employee until termination of employment or reclassification of the  
14          temporary employee as a permanent employee.
- 15          7. A former participating member who has accepted a retirement distribution pursuant  
16          to section 54-52.6-13 and who subsequently becomes employed by an entity  
17          different from the employer with which the member was employed at the time the  
18          member retired but which does participate in any state-sponsored retirement plan  
19          may, before reenrolling in the defined contribution retirement plan, elect to  
20          permanently waive future participation in the defined contribution retirement plan,  
21          whatever plan in which the new employing entity participates, and the retiree health  
22          program and maintain that member's retirement status. Neither the member nor  
23          the employer are required to make any future retirement contributions on behalf of  
24          that employee.

25           **SECTION 13. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **54-52.6-09. Contributions - Penalty.**

- 28           1. ~~Each~~ Except as otherwise provided in this section, each participating member shall  
29           contribute monthly four percent of the monthly salary or wage paid to the  
30           participant, and this assessment must be deducted from the participant's salary in

- 1 equal monthly installments commencing with the first month of participation in the  
2 defined contribution retirement plan established under this chapter.
- 3 2. The Except as otherwise provided in this section, the employer shall contribute an  
4 amount equal to four and twelve-hundredths percent of the monthly salary or wage  
5 of a participating member. If the employee's contribution is paid by the employer  
6 under subsection 3 Z, the employer shall contribute, in addition, an amount equal  
7 to the required employee's contribution. 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, it is subject to a civil penalty of fifty dollars  
11 and, as interest, one percent of the amount due for each month of delay or fraction  
12 thereof after the payment became due.
- 13 3. Each judge of the supreme or district court shall contribute monthly five percent of  
14 the monthly salary or wage paid to the participant, and this assessment must be  
15 deducted from the participant's salary in equal monthly installments. The state  
16 shall contribute an amount equal to fourteen and fifty-two hundredths percent of  
17 the monthly salary or wage of a participating judge of the supreme or district court.  
18 If the employee's contribution is paid by the employer under subsection 7, the  
19 employer shall contribute, in addition, an amount equal to the required employee's  
20 contribution. The employer shall pay monthly such contributions into the  
21 participating member's account from its funds appropriated for payroll and salary or  
22 any other funds available for such purposes. If the employer fails to pay the  
23 contributions monthly, the employer is subject to a civil penalty of fifty dollars and,  
24 as interest, one percent of the amount due for each month of delay or fraction  
25 thereof after the payment became due.
- 26 4. Each member of the North Dakota highway patrol shall contribute monthly ten and  
27 thirty hundredths percent of the member's monthly salary, which sum must be  
28 deducted from the member's salary in equal monthly installments. The state shall  
29 contribute an amount equal to sixteen and seventy hundredths percent of the  
30 monthly salary or wage of a participating member of the North Dakota highway  
31 patrol. If the employee's contribution is paid by the employer under subsection 7,

1           the employer shall contribute, in addition, an amount equal to the required  
2           employee's contribution. The employer shall pay monthly such contributions into  
3           the participating member's account from its funds appropriated for payroll and  
4           salary or any other funds available for such purposes. If the employer fails to pay  
5           the contributions monthly, the employer is subject to a civil penalty of fifty dollars  
6           and, as interest, one percent of the amount due for each month of delay or fraction  
7           thereof after the payment became due.

8           5. The employer of a national guard security officer or firefighter shall contribute an  
9           amount determined by the board under section 54-52-06.2. The employer's  
10           contribution must be paid from funds appropriated for salary or from any other  
11           funds available for such purposes. If the security officer's or firefighter's  
12           assessment is paid by the employer under subsection 7, the employer shall  
13           contribute, in addition, an amount equal to the required national guard security  
14           officer's or firefighter's assessment.

15           6. The employer of a peace officer employed by the bureau of criminal investigation  
16           shall contribute an amount determined by the board under section 54-52-06.4. The  
17           employer's contribution must be paid from funds appropriated for salary or from  
18           any other funds available for such purposes. If the peace officer's assessment is  
19           paid by the employer under subsection 7, the employer shall contribute, in addition,  
20           an amount equal to the required peace officer's assessment.

21           7. Each employer, at its option, may pay the employee contributions required by this  
22           section for all compensation earned after December 31, 1999. The amount paid  
23           must be paid by the employer in lieu of contributions by the employee. If the  
24           employer decides not to pay the contributions, the amount that would have been  
25           paid will continue to be deducted from the employee's compensation. If  
26           contributions are paid by the employer, they must be treated as employer  
27           contributions in determining tax treatment under this code and the federal Internal  
28           Revenue Code. Contributions paid by the employer may not be included as gross  
29           income of the employee in determining tax treatment under this code and the  
30           federal Internal Revenue Code until they are distributed or made available. The  
31           employer shall pay these employee contributions from the same source of funds

1            used in paying compensation to the employee. The employer shall pay these  
2            contributions by effecting an equal cash reduction in the gross salary of the  
3            employee or by an offset against future salary increases or by a combination of a  
4            reduction in gross salary and offset against future salary increases. Employee  
5            contributions paid by the employer must be treated for the purposes of this chapter  
6            in the same manner and to the same extent as employee contributions made  
7            before the date on which employee contributions were assumed by the employer.  
8            An employer shall exercise its option under this subsection by December 1, 1999,  
9            and shall report its choice to the board in writing. The option chosen may not be  
10           revoked for the remainder of the biennium. Thereafter, the option choice must be  
11           forwarded to the board, in writing, by June fifteenth of each odd-numbered year.