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Sixty-second
Legislative Assembly
of North Dakota

Introduced by

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

1 A BILL for an Act to amend and reenact section 15-10-17, subsection 6 of section 39-03.1-11,
2 subsection 1 of section 39-03.1-11.2, sections 39-03.1-14.1 and 54-52-03, subsections 3 and 6
3 of section 54-52-17, section 54-52-27, subsection 1 of section 54-52-28, subsection 3 of section
4 54-52.1-03, and subsection 3 of section 54-52.6-09 of the North Dakota Century Code, relating
5 to special annuity purchases in the alternate retirement program for university system
6 employees, surviving spouse payment options under the highway patrolmen's retirement plan,
7 calculation of member service credit under the highway patrolmen's retirement plan, election of
8 members to the public employees retirement system board, calculation of normal retirement
9 date for peace officers and correctional officers under the public employees retirement system,
10 payment of member account balances under the public employees retirement system, purchase
11 of sick leave credit under the public employees retirement system, spousal elections to
12 participate in the uniform group insurance program, reporting of employer pickups under the
13 defined contribution retirement plan, and Internal Revenue Code compliance under the highway
14 patrolmen's retirement plan and the public employees retirement system.

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

16 **SECTION 1. AMENDMENT.** Section 15-10-17 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **15-10-17. Specific powers and duties of the state board of higher education.** The
19 state board of higher education has all the powers and shall perform all the duties necessary to
20 the control and management of the institutions described in this chapter. In addition to the
21 powers and duties specified in section 6 of article VIII of the Constitution of North Dakota, the
22 board may:

23 1. a. Appoint and remove the president or other faculty head, and the professors,
24 instructors, teachers, officers, and other employees of the several institutions

- 1 under its control, and to fix their salaries within the limits of legislative
2 appropriations therefor, and to fix the terms of office and to prescribe the
3 duties thereof, provided that the consideration of the appointment or removal
4 of any such personnel shall be in executive session if the board chooses
5 unless the individual involved requests that the meeting be open to other
6 individuals or to the public.
- 7 b. Appoint and remove the commissioner of higher education, fix the
8 commissioner's salary within the limits of legislative appropriations, and
9 prescribe the commissioner's duties.
- 10 c. Appoint and remove all university system office personnel, fix their salaries
11 within the limits of legislative appropriations, fix their terms of office, and
12 prescribe their duties.
- 13 2. Authorize the employment of law enforcement officers having concurrent
14 jurisdiction with other law enforcement officers to enforce laws and regulations at
15 its institutions.
- 16 3. Set tuition and fees.
- 17 4. a. Establish a retirement program as an alternative to chapter 15-39.1 for
18 university system employees subject to the following guidelines:
- 19 (1) Benefits under the program must be provided through annuity contracts
20 purchased by the board but which become the property of the
21 participants;
- 22 (2) The cost of the annuity contracts must be defrayed by contributions
23 made pursuant to rules of the state board of higher education;
- 24 (3) Eligible employees appointed before July 1, 1973, shall participate in
25 the alternate retirement program only by their individual election. When
26 the electing eligible employee is a member of the teachers' fund for
27 retirement, the employee's assessments and employer's contributions
28 together with interest credited at the current rate for one-year
29 certificates then being paid by the Bank of North Dakota must be
30 transferred to the employee's account in the alternate program. The
31 election must be made before July 1, 1980, and shall relinquish all

- 1 rights the eligible employee or the employee's beneficiary may have to
2 benefits provided in chapters 15-39 and 15-39.2; and
- 3 (4) Employees of the university system who are members of the public
4 employees retirement system under chapter 54-52 or 54-52.6 and who
5 become entitled to participate in the alternate retirement program are
6 entitled to a special annuity purchase in the alternate retirement
7 program in accordance with this subdivision. An eligible employee who
8 consents to have that employee's contribution included is entitled to
9 have that employee's contribution and employer's contribution, with
10 interest, in the public employees retirement system fund, used by the
11 retirement board of the public employees retirement system to
12 purchase for that employee an annuity in the alternate retirement
13 program in lieu of any other rights under the public employees
14 retirement fund. However, before the employer's contribution may be
15 used for an annuity purchase, the employee's combined years of
16 service with the public employees retirement system and the alternate
17 retirement program must equal or exceed the years of service
18 necessary to be eligible for retirement benefits under the public
19 employees retirement system. An employee who transferred from the
20 public employees retirement system before March 30, 1987, and who
21 received a refund of that employee's contribution is entitled to have the
22 employer's contribution, with interest, used to purchase an annuity even
23 if that employee did not purchase an annuity in the alternate employee
24 program with the employee's contribution. If an employee makes the
25 election allowed under this subdivision, that employee relinquishes all
26 rights the employee or any of the employee's beneficiaries may have
27 had to benefits provided under ~~chapter~~ chapters 54-52 and 54-52.6.
- 28 b. Provide for the administration of the alternate retirement program and
29 establish rules for the program consistent with this subsection. This
30 subsection does not derogate any existing retirement programs approved by
31 the board.

- 1 5. Determine policy for purchasing by the university system in coordination with the
2 office of management and budget as provided by law.
- 3 6. Establish by rule an early retirement program for faculty and officers of the board
4 as defined by the board. The limitations on severance pay pursuant to section
5 54-14-04.3 and on requiring the employee to pay contributions to continue on the
6 state uniform group insurance program upon retirement or upon termination of
7 employment pursuant to section 54-52.1-03 do not apply to the early retirement
8 program.
- 9 7. Adopt rules to protect the confidentiality of student records, medical records, and,
10 consistent with section 44-04-18.4, trade secret, proprietary, commercial, and
11 financial information.
- 12 8. Authorize and encourage university system entities to enter into partnerships,
13 limited liability companies, joint ventures, or other contractual arrangements with
14 private business and industry for the purpose of business or industrial development
15 or fostering basic and applied research or technology transfer.
- 16 9. Adopt rules promoting research, encouraging development of intellectual property
17 and other inventions and discoveries by university system employees, and
18 protecting and marketing the inventions and discoveries. The rules must govern
19 ownership or transfer of ownership rights and distribution of income that may be
20 derived from an invention or discovery resulting from research or employment in
21 the university system. The rules may provide for transfer of ownership rights or
22 distribution of income to a private, nonprofit entity created for the support of the
23 university system or one of its institutions.

24 **SECTION 2. AMENDMENT.** Subsection 6 of section 39-03.1-11 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 6. If before retiring a contributor dies after completing ten years of eligible
27 employment, the board shall pay the contributor's accumulated deductions to the
28 contributor's designated beneficiary as provided in this subsection. If the
29 contributor has designated an alternate beneficiary with the surviving spouse's
30 written consent, the board shall pay the contributor's account balance to the named
31 beneficiary. If the contributor has named more than one primary beneficiary, the

1 board shall pay the contributor's account balance to the named primary
2 beneficiaries in the percentages designated by the contributor or, if the contributor
3 has not designated a percentage for the beneficiaries, in equal percentages. If one
4 or more of the primary beneficiaries has predeceased the contributor, the board
5 shall pay the predeceased beneficiary's share to the remaining primary
6 beneficiaries. If there are no remaining primary beneficiaries, the board shall pay
7 the contributor's account balance to the contingent beneficiaries in the same
8 manner. If there are no remaining designated beneficiaries, the board shall pay
9 the contributor's account balance to the contributor's estate. If the contributor has
10 not designated an alternate beneficiary under this section or the surviving spouse
11 is the beneficiary, the surviving spouse of the contributor may select one of the
12 following optional forms of payment:

- 13 a. A lump sum payment of the contributor's accumulated deductions as of the
14 date of death.
- 15 b. ~~Payments for sixty months as calculated for the deceased contributor as if the~~
16 ~~contributor were age fifty five at the date of death.~~
- 17 e. Payment of a monthly retirement benefit equal to fifty percent of the deceased
18 contributor's accrued normal retirement benefits until the spouse dies.

19 **SECTION 3. AMENDMENT.** Subsection 1 of section 39-03.1-11.2 of the North Dakota
20 Century Code is amended and reenacted as follows:

- 21 1. The board shall administer the plan in compliance with section 415, section
22 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code
23 in effect on August 1, ~~2009~~ 2011, as it applies for governmental plans.

24 **SECTION 4. AMENDMENT.** Section 39-03.1-14.1 of the North Dakota Century Code
25 is amended and reenacted as follows:

26 **39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of**
27 **benefits.**

- 28 1. For the purpose of determining eligibility for benefits under this chapter, a
29 member's years of service is the total of the years of service earned under this
30 chapter and the years of service employment or years of service credit earned in

- 1 any number of the following, the total of which may not exceed twelve months of
2 credit per year:
- 3 a. The public employees retirement system.
 - 4 b. The teachers' fund for retirement.
 - 5 c. The teachers' insurance and annuity association of America - college
6 retirement equities fund (TIAA-CREF), for service credit earned while
7 employed by North Dakota institutions of higher education.
- 8 2. If a member terminates eligible employment under this chapter, if that member has
9 not received a refund of the member's accumulated deductions, and if that member
10 begins eligible employment in a plan described in subdivision a or b of
11 subsection 1, that member may elect to remain an inactive member of the system
12 without refund of the member's accumulated deductions. The election must be
13 made within ninety days after beginning the eligible employment. The board shall
14 terminate the inactive status of a member under this subsection if the member
15 gains eligible employment under this chapter or if the member terminates eligible
16 employment under a plan described in subdivision a or b of subsection 1.
- 17 3. Pursuant to rules adopted by the board, a member who has service credit in the
18 system and in any of the alternate plans described in subdivision a or b of
19 subsection 1 is entitled to benefits under this chapter. The employee may elect to
20 have benefits calculated using the benefit formula in section 39-03.1-11 under
21 either of the following calculation methods:
- 22 a. By using the average of the highest salary received by the member for any
23 ~~consecutive~~ thirty-six months employed during the last one hundred twenty
24 months of employment in the highway patrolmen's retirement system. If the
25 participating member has worked for less than thirty-six months at retirement,
26 the final average salary is the average salary for the total months of
27 employment.
 - 28 b. Using the average of the highest salary received by the member for any
29 thirty-six ~~consecutive~~ months during the last one hundred twenty months of
30 employment, with service credit not to exceed one month in any month when
31 combined with the service credit earned in the alternate retirement system.

1 The board shall calculate benefits for an employee under this subsection by using
2 only those years of service employment earned under this chapter.

3 **SECTION 5. AMENDMENT.** Section 54-52-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-52-03. Governing authority.** A state agency is hereby created to constitute the
6 governing authority of the system to consist of a board of seven persons known as the
7 retirement board. No more than one elected member of the board may be in the employ of a
8 single department, institution, or agency of the state or in the employ of a political subdivision.
9 No employee of the public employees retirement system or the state retirement and investment
10 office may serve on the board.

- 11 1. One member of the board must be appointed by the governor to serve a term of
12 five years. The appointee must be a North Dakota citizen who is not a state or
13 political subdivision employee and who by experience is familiar with money
14 management. The citizen member is chairman of the board.
- 15 2. One member of the board must be appointed by the attorney general from the
16 attorney general's legal staff and shall serve a term of five years.
- 17 3. The state health officer appointed under section 23-01-05 is a member of the
18 board.
- 19 4. Three board members must be elected by and from among the active participating
20 members, members of the retirement plan established under chapter 54-52.6,
21 members of the retirement plan established under chapter 39-03.1, and members
22 of the job service North Dakota retirement plan. Employees who have terminated
23 their employment for whatever reason are not eligible to serve as elected members
24 of the board under this subsection. Board members must be elected to a five-year
25 term pursuant to an election called by the board. Notice of board elections must be
26 given to all active participating members. The time spent in performing duties as a
27 board member may not be charged against any employee's accumulated annual or
28 any other type of leave.
- 29 5. One board member must be elected by and from among those persons who are
30 receiving retirement benefits ~~or who are eligible to receive deferred vested~~
31 retirement benefits under this chapter. The board shall call the election and must

1 give prior notice of the election to the persons eligible to participate in the election
2 pursuant to this subsection. The board member shall serve a term of five years.

3 6. The members of the board are entitled to receive sixty-two dollars and fifty cents
4 per day compensation and necessary mileage and travel expenses as provided in
5 sections 44-08-04 and 54-06-09. This is in addition to any other pay or allowance
6 due the chairman or a member, plus an allowance for expenses they may incur
7 through service on the board.

8 7. A board member shall serve a five-year term and until the board member's
9 successor qualifies. Each board member is entitled to one vote, and four of the
10 seven board members constitute a quorum. Four votes are necessary for
11 resolution or action by the board at any meeting.

12 **SECTION 6. AMENDMENT.** Subsections 3 and 6 of section 54-52-17 of the North
13 Dakota Century Code are amended and reenacted as follows:

14 3. Retirement dates are defined as follows:

15 a. Normal retirement date, except for a national guard security officer or
16 firefighter or a peace officer or correctional officer employed by the bureau of
17 criminal investigation or by a political subdivision, is:

18 (1) The first day of the month next following the month in which the
19 member attains the age of sixty-five years; or

20 (2) When the member has a combined total of years of service credit and
21 years of age equal to eighty-five and has not received a retirement
22 benefit under this chapter.

23 b. Normal retirement date for a national guard security officer or firefighter is the
24 first day of the month next following the month in which the national guard
25 security officer or firefighter attains the age of fifty-five years and has
26 completed at least three consecutive years of employment as a national guard
27 security officer or firefighter immediately preceding retirement.

28 c. Normal retirement date for a peace officer or correctional officer employed by
29 a political subdivision is:

30 (1) The first day of the month next following the month in which the peace
31 officer or correctional officer attains the age of fifty-five years and has

- 1 completed at least three consecutive years of employment as a peace
2 officer or correctional officer ~~immediately preceding retirement~~; or
- 3 (2) When the peace officer or correctional officer has a combined total of
4 years of service credit and years of age equal to eighty-five and has not
5 received a retirement benefit under this chapter.
- 6 d. Normal retirement date for a peace officer employed by the bureau of criminal
7 investigation is:
- 8 (1) The first day of the month next following the month in which the peace
9 officer attains the age of fifty-five years and has completed at least
10 three consecutive years of employment as a peace officer immediately
11 preceding retirement; or
- 12 (2) When the peace officer has a combined total of years of service credit
13 and years of age equal to eighty-five and has not received a retirement
14 benefit under this chapter.
- 15 e. Postponed retirement date is the first day of the month next following the
16 month in which the member, on or after July 1, 1977, actually severs or has
17 severed the member's employment after reaching the normal retirement date.
- 18 f. Early retirement date, except for a national guard security officer or firefighter
19 or a peace officer or correctional officer employed by the bureau of criminal
20 investigation or by a political subdivision, is the first day of the month next
21 following the month in which the member attains the age of fifty-five years and
22 has completed three years of eligible employment. For a national guard
23 security officer or firefighter, early retirement date is the first day of the month
24 next following the month in which the national guard security officer or
25 firefighter attains the age of fifty years and has completed at least three years
26 of eligible employment. For a peace officer or correctional officer employed
27 by the bureau of criminal investigation or by a political subdivision, early
28 retirement date is the first day of the month next following the month in which
29 the peace officer or correctional officer attains the age of fifty years and has
30 completed at least three years of eligible employment.

1 g. Disability retirement date is the first day of the month after a member
2 becomes permanently and totally disabled, according to medical evidence
3 called for under the rules of the board, and has completed at least one
4 hundred eighty days of eligible employment. For supreme and district court
5 judges, permanent and total disability is based solely on a judge's inability to
6 perform judicial duties arising out of physical or mental impairment, as
7 determined pursuant to rules adopted by the board or as provided by
8 subdivision a of subsection 3 of section 27-23-03. A member is eligible to
9 receive disability retirement benefits only if the member:

- 10 (1) Became disabled during the period of eligible employment; and
11 (2) Applies for disability retirement benefits within twelve months of the
12 date the member terminates employment.

13 A member is eligible to continue to receive disability benefits as long as the
14 permanent and total disability continues and the member submits the
15 necessary documentation and undergoes medical testing required by the
16 board, or for as long as the member participates in a rehabilitation program
17 required by the board, or both. If the board determines that a member no
18 longer meets the eligibility definition, the board may discontinue the disability
19 retirement benefit. The board may pay the cost of any medical testing or
20 rehabilitation services it deems necessary and these payments are
21 appropriated from the retirement fund for those purposes.

22 6. If before retiring a member dies after completing three years of eligible
23 employment, except for supreme and district court judges, who must have
24 completed five years of eligible employment, the board shall pay the member's
25 account balance to the member's designated beneficiary as provided in this
26 subsection. If the member has designated an alternate beneficiary with the
27 surviving spouse's written consent, the board shall pay the member's account
28 balance to the named beneficiary. If the member has named more than one
29 primary beneficiary, the board shall pay the member's account balance to the
30 named primary beneficiaries in the percentages designated by the member or, if
31 the member has not designated a percentage for the beneficiaries, in equal

- 1 percentages. If one or more of the primary beneficiaries has predeceased the
2 member, the board shall pay the predeceased beneficiary's share to the remaining
3 primary beneficiaries. If any beneficiary survives the member, yet dies before
4 distribution of the beneficiary's share, the beneficiary must be treated as if the
5 beneficiary predeceased the member. If there are no remaining primary
6 beneficiaries, the board shall pay the member's account balance to the contingent
7 beneficiaries in the same manner. If there are no remaining designated
8 beneficiaries, the board shall pay the member's account balance to the member's
9 estate. If the member has not designated an alternate beneficiary or the surviving
10 spouse is the beneficiary, the surviving spouse of the member may select a form of
11 payment as follows:
- 12 a. If the member was a supreme or district court judge, the surviving spouse
13 may select one of the following optional forms of payment:
- 14 (1) A lump sum payment of the member's retirement account as of the date
15 of death.
- 16 (2) Payments as calculated for the deceased member as if the member
17 was of normal retirement age at the date of death, payable until the
18 spouse dies.
- 19 b. The surviving spouse of all other members may select one of the following
20 options:
- 21 (1) A lump sum payment of the member's retirement account as of the date
22 of death.
- 23 (2) Payment of a monthly retirement benefit equal to fifty percent of the
24 deceased member's accrued single life retirement benefits until the
25 spouse dies.
- 26 (3) If the member dies on or after the member's normal retirement date, the
27 payment of a monthly retirement benefit equal to an amount that would
28 have been paid to the surviving spouse if the member had retired on
29 the day of the member's death and had selected a one hundred percent
30 joint and survivor annuity, payable until the spouse dies. A surviving
31 spouse who received a benefit under this subsection as of July 31,

1 1995, is entitled to the higher of that person's existing benefit or the
2 equivalent of the accrued benefit available under the one hundred
3 percent joint and survivor provision as if the deceased member were of
4 normal retirement age, with the increase payable beginning August 1,
5 1995.

6 **SECTION 7. AMENDMENT.** Section 54-52-27 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **54-52-27. Purchase of sick leave credit.** A member is entitled to credit in the
9 retirement system for each month of unused sick leave, as certified by the member's employer,
10 if the member or the member's employer pays an amount equal to the member's final average
11 salary, times the number of months of sick leave converted, times the percent of employer and
12 employee contributions to the retirement program of the member, plus the required contribution
13 for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are
14 deemed to be a full month for purposes of conversion to service credit. A member may convert
15 all of the member's certified sick leave or a part of the member's certified sick leave. ~~All~~
16 ~~conversion payments must be made within sixty days of termination of employment and before~~
17 ~~the member receives a retirement annuity unless the member has submitted an approved~~
18 ~~payment plan to the board.~~

19 **SECTION 8. AMENDMENT.** Subsection 1 of section 54-52-28 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 1. The board shall administer the plan in compliance with section 415, section
22 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code
23 in effect on August 1, ~~2009~~ 2011, as it applies for governmental plans.

24 **SECTION 9. AMENDMENT.** Subsection 3 of section 54-52.1-03 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 3. A retiree who has accepted a periodic distribution from the defined contribution
27 retirement plan pursuant to section 54-52.6-13 who the board determines is eligible
28 for participation in the uniform group insurance program or has accepted a
29 retirement allowance from the public employees retirement system, the highway
30 patrolmen's retirement system, the teachers' insurance and annuity association of
31 America - college retirement equities fund for service credit earned while employed

1 by North Dakota institutions of higher education, the retirement system established
2 by job service North Dakota under section 52-11-01, the judges' retirement system
3 established under chapter 27-17, or the teachers' fund for retirement may elect to
4 participate in the uniform group under this chapter without meeting minimum
5 requirements at age sixty-five, when the member's spouse reaches age sixty-five,
6 upon the receipt of a benefit, or when the spouse terminates employment. If a
7 retiree or surviving spouse does not elect to participate at the times specified in this
8 subsection, the retiree or surviving spouse must meet the minimum requirements
9 established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each
10 retiree or surviving spouse shall pay directly to the board the premiums in effect for
11 the coverage then being provided. A retiree or surviving spouse who has met the
12 initial eligibility requirements of this subsection to begin participation in the uniform
13 group insurance program remains eligible as long as the retiree maintains the
14 retiree's participation in the program by paying the required premium pursuant to
15 rules adopted by the board.

16 **SECTION 10. AMENDMENT.** Subsection 3 of section 54-52.6-09 of the North Dakota
17 Century Code is amended and reenacted as follows:

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

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