

HOUSE BILL NO.

Introduced by

Representative Wald

1 A BILL for an Act to amend and reenact subsection 4 of section 54-52-01 and sections
2 54-52-02.5, 54-52-02.9, 54-52.6-01, and 54-52.6-02 of the North Dakota Century Code, relating
3 to a defined contribution retirement plan for state employees.

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

5 **SECTION 1. AMENDMENT.** Subsection 4 of section 54-52-01 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 4. "Eligible employee" means all permanent employees who are first employed before
8 August 1, 2011, and who meet all of the eligibility requirements set by this chapter
9 and who are eighteen years or more of age, and includes appointive and elective
10 officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, first employed
11 before August 1, 2011, and nonteaching employees of the superintendent of public
12 instruction, including the superintendent of public instruction, who ~~elect~~ elected to
13 transfer from the teachers' fund for retirement to the public employees retirement
14 system under section 54-52-02.13, and employees of the state board for career
15 and technical education who ~~elect~~ elected to transfer from the teachers' fund for
16 retirement to the public employees retirement system under section 54-52-02.14.
17 Eligible employee does not include ~~nonclassified~~ state employees who ~~elect to~~
18 ~~become members of the retirement plan established under chapter 54-52.6~~ are
19 first employed after July 31, 2011, but does include employees of the judicial
20 branch; employees eligible to participate in the national guard retirement plan or a
21 law enforcement retirement plan, employees of a political subdivision, and
22 employees of the board of higher education and state institutions under the
23 jurisdiction of the board first employed before August 1, 2011, and who are not

1 participating in the teachers' insurance and annuity association of America -
2 college retirement equities fund retirement plan.

3 **SECTION 2. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-52-02.5. Newly elected and appointed state officials.** After December 31, 1999,
6 ~~a person~~ and before August 1, 2011, an individual elected or appointed to a state office for the
7 first time must, from and after the date that ~~person~~ individual qualifies and takes office, be a
8 participating member of the public employees retirement system unless that ~~person~~ individual
9 makes an election at any time during the first six months after the date the ~~person~~ individual
10 takes office to participate in the retirement plan established under chapter 54-52.6. After
11 July 31, 2011, an individual elected or appointed to a state office for the first time must, from
12 and after the date that individual qualifies and takes office, be a participating member of the
13 retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the
14 first time" means ~~a person~~ an individual appointed, who, after December 31, 1999, does not
15 hold office as an appointed official at the time of that ~~person's~~ individual's appointment.

16 **SECTION 3. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **54-52-02.9. Participation by temporary employees.** A Before August 1, 2011, a
19 temporary employee may elect, within one hundred eighty days of beginning employment, to
20 participate in the public employees retirement system under this chapter and receive credit for
21 service after enrollment. After July 31, 2011, a temporary employee may elect, within one
22 hundred eighty days of beginning employment, to participate in the retirement plan established
23 under chapter 54-52.6. The temporary employee shall pay monthly to the fund an amount
24 equal to eight and twelve-hundredths percent times the temporary employee's present monthly
25 salary. The temporary employee shall also pay the required monthly contribution to the retiree
26 health benefit fund established under section 54-52.1-03.2. This contribution must be recorded
27 as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the
28 temporary employee's contributions. A temporary employee may continue to participate as a
29 temporary employee in the public employees retirement system until termination of employment
30 or reclassification of the temporary employee as a permanent employee. A temporary

1 employee may not purchase any additional credit, including additional credit under section
2 54-52-17.4 or past service under section 54-52-02.6.

3 **SECTION 4. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise
6 requires:

- 7 1. "Board" means the public employees retirement system board.
- 8 2. "Deferred member" means a person who elected to receive deferred vested
9 retirement benefits under chapter 54-52.
- 10 3. "Eligible employee" means a permanent state employee, except an employee of
11 the judicial branch ~~or~~, an employee of the board of higher education and state
12 institutions under the jurisdiction of the board eligible to participate in the teachers'
13 insurance and annuity association of America - college retirement equities fund
14 retirement plan, and an employee eligible to participate in the national guard
15 retirement plan or a law enforcement retirement plan, who is eighteen years or
16 more of age and ~~who is in a position not classified by North Dakota human~~
17 ~~resource management services~~ a temporary employee who elects to participate
18 after July 31, 2011, in the retirement plan established under this chapter. If a
19 participating member loses permanent employee status and becomes a temporary
20 employee, the member may still participate in the defined contribution retirement
21 plan.
- 22 4. "Employee" means any person employed by the state, whose compensation is
23 paid out of state funds, or funds controlled or administered by the state or paid by
24 the federal government through any of its executive or administrative officials.
- 25 5. "Employer" means the state of North Dakota.
- 26 6. "Participating member" means an eligible employee who ~~elects to participate~~
27 participates in the defined contribution retirement plan established under this
28 chapter.
- 29 7. "Permanent employee" means a state employee whose services are not limited in
30 duration and who is filling an approved and regularly funded position and is
31 employed twenty hours or more per week and at least five months each year.

1 8. "Wages" and "salaries" means earnings in eligible employment under this chapter
2 reported as salary on a federal income tax withholding statement plus any salary
3 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h),
4 or 457. "Salary" does not include fringe benefits such as payments for unused sick
5 leave, personal leave, vacation leave paid in a lump sum, overtime, housing
6 allowances, transportation expenses, early retirement, incentive pay, severance
7 pay, medical insurance, workforce safety and insurance benefits, disability
8 insurance premiums or benefits, or salary received by a member in lieu of
9 previously employer-provided fringe benefits under an agreement between an
10 employee and a participating employer. Bonuses may be considered as salary
11 under this section if reported and annualized pursuant to rules adopted by the
12 board.

13 **SECTION 5. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **54-52.6-02. Election.**

16 1. The board shall provide an opportunity for each eligible employee who is a
17 member of the public employees retirement system on September 30, 2001, and
18 who has not made a written election under this section to transfer to the defined
19 contribution retirement plan before October 1, 2001, to elect in writing to terminate
20 membership in the public employees retirement system and elect to become a
21 participating member under this chapter. Except as provided in section
22 54-52.6-03, an election made by an eligible employee under this section is
23 irrevocable. The board shall accept written elections under this section from
24 eligible employees during the period beginning on July 1, 1999, and ending
25 12:01 a.m. December 14, 2001. An eligible employee who does not make a
26 written election or who does not file the election during the period specified in this
27 section continues to be a member of the public employees retirement system. An
28 eligible employee who makes and files a written election under this section ceases
29 to be a member of the public employees retirement system effective twelve
30 midnight December 31, 2001; becomes a participating member in the defined
31 contribution retirement plan under this chapter effective 12:01 a.m. January 1,

1 2002; and waives all of that person's rights to a pension, annuity, retirement
2 allowance, insurance benefit, or any other benefit under the public employees
3 retirement system effective December 31, 2001. This section does not affect a
4 person's right to health benefits or retiree health benefits under chapter 54-52.1.
5 An eligible employee who is first employed and entered upon the payroll of that
6 person's employer after September 30, 2001, and before August 1, 2011, may
7 make an election to participate in the defined contribution retirement plan
8 established under this chapter at any time during the first six months after the date
9 of employment. If the board, in its sole discretion, determines that the employee
10 was not adequately notified of the employee's option to participate in the defined
11 contribution retirement plan, the board may provide the employee a reasonable
12 time within which to make that election, which may extend beyond the original
13 six-month decision window.

14 2. If an individual who is a deferred member of the public employees retirement
15 system on September 30, 2001, is reemployed and by virtue of that employment is
16 again eligible for membership in the public employees retirement system under
17 chapter 54-52, the individual may elect in writing to remain a member of the public
18 employees retirement system or if eligible to participate in the defined contribution
19 retirement plan established under this chapter to terminate membership in the
20 public employees retirement system and become a participating member in the
21 defined contribution retirement plan established under this chapter. An election
22 made by a deferred member under this section is irrevocable. The board shall
23 accept written elections under this section from a deferred member during the
24 period beginning on the date of the individual's reemployment and ending upon the
25 expiration of six months after the date of that reemployment. If the board, in its
26 sole discretion, determines that the employee was not adequately notified of the
27 employee's option to participate in the defined contribution retirement plan, the
28 board may provide the employee a reasonable time within which to make that
29 election, which may extend beyond the original six-month decision window. A
30 deferred member who makes and files a written election to remain a member of the
31 public employees retirement system retains all rights and is subject to all conditions

1 as a member of that retirement system. A deferred member who does not make a
2 written election or who does not file the election during the period specified in this
3 section continues to be a member of the public employees retirement system. A
4 deferred member who makes and files a written election to terminate membership
5 in the public employees retirement system ceases to be a member of the public
6 employees retirement system effective on the last day of the payroll period that
7 includes the date of the election; becomes a participating member in the defined
8 contribution retirement plan under this chapter effective the first day of the payroll
9 immediately following the date of the election; and waives all of that person's rights
10 to a pension, an annuity, a retirement allowance, insurance benefit, or any other
11 benefit under the public employees retirement system effective the last day of the
12 payroll that includes the date of the election. This section does not affect any right
13 to health benefits or retiree health benefits to which the deferred member may
14 otherwise be entitled.

15 3. An eligible employee who elects to participate in the retirement plan established
16 under this chapter must remain a participant even if that employee returns to the
17 classified service or becomes employed by a political subdivision that participates
18 in the public employees retirement system. The contribution amount must be as
19 provided in this chapter, regardless of the position in which the employee is
20 employed. Notwithstanding the irrevocability provisions of this chapter, if a
21 member who elects to participate in the retirement plan established under this
22 chapter becomes a supreme or district court judge, becomes a member of the
23 highway patrol, becomes employed in a position subject to teachers' fund for
24 retirement membership, or becomes an employee of the board of higher education
25 or state institution under the jurisdiction of the board who is eligible to participate in
26 an alternative retirement program established under subsection 6 of section
27 15-10-17, the member's status as a member of the defined contribution retirement
28 plan is suspended, and the member becomes a new member of the retirement
29 plan for which that member's new position is eligible. The member's account
30 balance remains in the defined contribution retirement plan, but no new
31 contributions may be made to that account. The member's service credit and

1 salary history that were forfeited as a result of the member's transfer to the defined
2 contribution retirement plan remain forfeited, and service credit accumulation in the
3 new retirement plan begins from the first day of employment in the new position. If
4 the member later returns to employment that is eligible for the defined contribution
5 plan, the member's suspension must be terminated, the member again becomes a
6 member of the defined contribution retirement plan, and the member's account
7 resumes accepting contributions. At the member's option, and pursuant to rules
8 adopted by the board, the member may transfer any available balance as
9 determined by the provisions of the alternate retirement plan into the member's
10 account under this chapter.

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

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

22 6. A participating member who becomes a temporary employee may still participate in
23 the defined contribution retirement plan upon filing an election with the board within
24 one hundred eighty days of transferring to temporary employee status. The
25 participating member may not become a member of the defined benefit plan as a
26 temporary employee. The temporary employee electing to participate in the
27 defined contribution retirement plan shall pay monthly to the fund an amount equal
28 to eight and twelve-hundredths percent times the temporary employee's present
29 monthly salary. The temporary employee shall also pay the required monthly
30 contribution to the retiree health benefit fund established under section
31 54-52.1-03.2. This contribution must be recorded as a member contribution

- 1 pursuant to section 54-52.1-03.2. An employer may not pay the temporary
2 employee's contributions. A temporary employee may continue to participate as a
3 temporary employee until termination of employment or reclassification of the
4 temporary employee as a permanent employee.
- 5 7. A former participating member who has accepted a retirement distribution pursuant
6 to section 54-52.6-13 and who subsequently becomes employed by an entity
7 different from the employer with which the member was employed at the time the
8 member retired but which does participate in any state-sponsored retirement plan
9 may, before reenrolling in the defined contribution retirement plan, elect to
10 permanently waive future participation in the defined contribution retirement plan,
11 whatever plan in which the new employing entity participates, and the retiree health
12 program and maintain that member's retirement status. Neither the member nor
13 the employer are required to make any future retirement contributions on behalf of
14 that employee.