

**FIRST ENGROSSMENT  
with Conference Committee Amendments  
ENGROSSED HOUSE BILL NO. 1452**

Introduced by

Representatives Kasper, Belter, Carlson, Dosch, Grande, Keiser, Klein, Ruby, Streyle

Senators Grindberg, Hogue, Klein

1 A BILL for an Act to create and enact a new section to chapter 39-03.1 and a new section to  
2 chapter 54-52 of the North Dakota Century Code, relating to expiration of the increase in  
3 highway patrolmen's retirement plan and public employees retirement system member and  
4 employer contributions; to amend and reenact sections 39-03.1-09 and 39-03.1-10, subsection  
5 4 of section 54-52-01, sections 54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2,  
6 54-52-06.3, and 54-52.6-01, subsection 6 of section 54-52.6-02, and sections 54-52.6-02 and  
7 54-52.6-09 of the North Dakota Century Code, relating to increased employer and employee  
8 contributions under the highway patrolmen's retirement plan and public employees retirement  
9 system and eligibility to participate in the defined contribution retirement plan; to provide for a  
10 legislative management study; to provide an appropriation; to provide an effective date; and to  
11 provide an expiration date.

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

13 **SECTION 1. AMENDMENT.** Section 39-03.1-09 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **39-03.1-09. Payments by contributors - Employer payment of employee contribution.**

16 1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund  
17 ten and thirty-hundredths percent of the member's monthly salary, which sum must be  
18 deducted from the member's salary and credited to the member's account in the fund.  
19 Member contributions increase by one percent of the member's monthly salary  
20 beginning with the monthly reporting period of January 2012, ~~and~~ with an additional  
21 increase of one percent, beginning with the monthly reporting period of January 2013,  
22 and with an additional increase of one percent, beginning with the monthly reporting  
23 period of January 2014.

- 1           2.   The state of North Dakota, at its option, may pay the member contributions required by  
2           subsection 1 for all compensation earned after June 30, 1983, and may pay the  
3           member contributions required to purchase service credit on a pretax basis pursuant  
4           to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in  
5           lieu of contributions by the member. A member may not receive the contributed  
6           amounts directly once the employer has elected to pay the member contributions. If  
7           the state decides not to pay the contributions, the amount that would have been paid  
8           will continue to be deducted from compensation. If contributions are paid by the state,  
9           they must be treated as employer contributions in determining tax treatment under this  
10          code and the federal Internal Revenue Code. If contributions are paid by the state,  
11          they must not be included as gross income of the member in determining tax  
12          treatment under this code and the Internal Revenue Code until they are distributed or  
13          made available. The state shall pay these member contributions from the same source  
14          of funds used in paying compensation to the members. The state shall pay these  
15          contributions by effecting an equal cash reduction in the gross salary of the employee  
16          or by an offset against future salary increases or by a combination of a reduction in  
17          gross salary and offset against future salary increases. If member contributions are  
18          paid by the state, they must be treated for the purposes of this chapter in the same  
19          manner and to the same extent as member contributions made prior to the date the  
20          contributions were assumed by the state. The option given employers by this  
21          subsection must be exercised in accordance with rules adopted by the board.
- 22          3.   For compensation earned after August 1, 2009, all employee contributions required  
23          under subsection 1, and not otherwise paid under subsection 2, must be paid by the  
24          state in lieu of contributions by the member. All contributions paid by the state under  
25          this subsection must be treated as employer contributions in determining tax treatment  
26          under this code and the federal Internal Revenue Code. Contributions paid by the  
27          state under this subsection may not be included as gross income of the member in  
28          determining tax treatment under this code and the Internal Revenue Code until the  
29          contributions are distributed or made available. Contributions paid by the state in  
30          accordance with this subsection must be treated for the purposes of this chapter in the  
31          same manner and to the same extent as member contributions made before the date

1 the contributions were assumed by the state. The state shall pay these member  
2 contributions from the same source of funds used in paying compensation to the  
3 members. The state shall pay these contributions by effecting an equal cash reduction  
4 in the gross salary of the employee. The state shall continue making payments under  
5 this section unless otherwise specifically provided for under the agency's biennial  
6 appropriation or by law.

7 **SECTION 2. AMENDMENT.** Section 39-03.1-10 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **39-03.1-10. Contributions by the state.**

10 The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths  
11 percent of the monthly salary or wage of a participating member. State contributions increase by  
12 one percent of the monthly salary or wage of a participating member beginning with the monthly  
13 reporting period of January 2012, and with an additional increase of one percent, beginning with  
14 the reporting period of January 2013, and with an additional increase of one percent, beginning  
15 with the monthly reporting period of January 2014. If the member's contribution is paid by the  
16 state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount  
17 equal to the required member's contribution. The state shall pay the associated employer  
18 contribution for those members who elect to exercise their rights under subsection 3 of section  
19 39-03.1-10.1.

20 **SECTION 3.** A new section to chapter 39-03.1 of the North Dakota Century Code is created  
21 and enacted as follows:

22 **Reduction in member and employer contributions.**

23 The required increase in the amount of member and employer contributions under  
24 sections 1 and 2 of this Act must be reduced to the rate in effect on the effective date of this Act  
25 effective on the July first that follows the first valuation of the highway patrolmen's retirement  
26 plan showing a ratio of the actuarial value of assets to the actuarial accrued liability of the  
27 highway patrolmen's retirement plan that is equal to or greater than one hundred percent.

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

30 4. "Eligible employee" means all permanent employees who meet all of the eligibility  
31 requirements set by this chapter and who are eighteen years or more of age, and

1 includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and  
2 54-52-02.12, and nonteaching employees of the superintendent of public instruction,  
3 including the superintendent of public instruction, who elect to transfer from the  
4 teachers' fund for retirement to the public employees retirement system under section  
5 54-52-02.13, and employees of the state board for career and technical education who  
6 elect to transfer from the teachers' fund for retirement to the public employees  
7 retirement system under section 54-52-02.14. Eligible employee does not include  
8 ~~nonclassified~~ state employees who elect to become members of the retirement plan  
9 established under chapter 54-52.6 ~~but does include employees of the judicial branch~~  
10 ~~and employees of the board of higher education and state institutions under the~~  
11 ~~jurisdiction of the board.~~

12 **SECTION 5. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **54-52-02.9. Participation by temporary employees.**

15 A temporary employee may elect, within one hundred eighty days of beginning employment,  
16 to participate in the public employees retirement system and receive credit for service after  
17 enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight  
18 and twelve-hundredths percent times the temporary employee's present monthly salary. The  
19 amount required to be paid by a temporary employee increases by two percent times the  
20 temporary employee's present monthly salary beginning with the monthly reporting period of  
21 January 2012, and with an additional two percent increase, beginning with the reporting period  
22 of January 2013, and with an additional increase of two percent, beginning with the monthly  
23 reporting period of January 2014. The temporary employee shall also pay the required monthly  
24 contribution to the retiree health benefit fund established under section 54-52.1-03.2. This  
25 contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An  
26 employer may not pay the temporary employee's contributions. A temporary employee may  
27 continue to participate as a temporary employee in the public employees retirement system until  
28 termination of employment or reclassification of the temporary employee as a permanent  
29 employee. A temporary employee may not purchase any additional credit, including additional  
30 credit under section 54-52-17.4 or past service under section 54-52-02.6.

1       **SECTION 6. AMENDMENT.** Section 54-52-05 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **54-52-05. Membership and assessments - Employer payment of employee**  
4 **contributions.**

- 5       1. Every eligible governmental unit employee concurring in the plan must so state in  
6 writing and all future eligible employees are participating members. An employee who  
7 was not enrolled in the retirement system when eligible to participate must be enrolled  
8 immediately upon notice of the employee's eligibility, unless the employee waives in  
9 writing the employee's right to participate for the previous time of eligibility, to avoid  
10 contributing to the fund for past service. An employee who is eligible for normal  
11 retirement who accepts a retirement benefit under this chapter and who subsequently  
12 becomes employed with a participating employer other than the employer with which  
13 the employee was employed at the time the employee retired under this chapter may,  
14 before reenrolling in the retirement plan, elect to permanently waive future  
15 participation in the retirement plan and the retiree health program and maintain that  
16 employee's retirement status. An employee making this election is not required to  
17 make any future employee contributions to the public employees retirement system  
18 nor is the employee's employer required to make any further contributions on behalf of  
19 that employee.
- 20       2. Each member must be assessed and required to pay monthly four percent of the  
21 monthly salary or wage paid to the member, and such assessment must be deducted  
22 and retained out of such salary in equal monthly installments commencing with the  
23 first month of employment. Member contributions increase by one percent of the  
24 monthly salary or wage paid to the member beginning with the monthly reporting  
25 period of January 2012, and with an additional increase of one percent, beginning with  
26 the monthly reporting period of January 2013, and with an additional increase of one  
27 percent, beginning with the monthly reporting period of January 2014.
- 28       3. Each employer, at its option, may pay all or a portion of the employee contributions  
29 required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and  
30 54-52-06.4 or the employee contributions required to purchase service credit on a  
31 pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not

1 receive the contributed amounts directly once the employer has elected to pay the  
2 employee contributions. The amount paid must be paid by the employer in lieu of  
3 contributions by the employee. If the state determines not to pay the contributions, the  
4 amount that would have been paid must continue to be deducted from the employee's  
5 compensation. If contributions are paid by the employer, they must be treated as  
6 employer contributions in determining tax treatment under this code and the federal  
7 Internal Revenue Code. If contributions are paid by the employer, they may not be  
8 included as gross income of the employee in determining tax treatment under this  
9 code and the Internal Revenue Code until they are distributed or made available. The  
10 employer shall pay these employee contributions from the same source of funds used  
11 in paying compensation to the employee or from the levy authorized by subsection 5  
12 of section 57-15-28.1. The employer shall pay these contributions by effecting an  
13 equal cash reduction in the gross salary of the employee or by an offset against future  
14 salary increases or by a contribution of a reduction in gross salary and offset against  
15 future salary increases. If employee contributions are paid by the employer, they must  
16 be treated for the purposes of this chapter in the same manner and to the same extent  
17 as employee contributions made prior to the date on which employee contributions  
18 were assumed by the employer. An employer exercising its option under this  
19 subsection shall report its choice to the board in writing.

- 20 4. For compensation earned after August 1, 2009, all employee contributions required  
21 under section 54-52-06.1 and the job service North Dakota retirement plan, and not  
22 otherwise paid under subsection 3, must be paid by the employer in lieu of  
23 contributions by the member. All contributions paid by the employer under this  
24 subsection must be treated as employer contributions in determining tax treatment  
25 under this code and the Internal Revenue Code. Contributions paid by the employer  
26 under this subsection may not be included as gross income of the member in  
27 determining tax treatment under this code and the Internal Revenue Code until the  
28 contributions are distributed or made available. Contributions paid by the employer in  
29 accordance with this subsection must be treated for the purposes of this chapter in the  
30 same manner and to the same extent as member contributions made before the date  
31 the contributions were assumed by the employer. The employer shall pay these

1 member contributions from the same source of funds used in paying compensation to  
2 the employee. The employer shall pay these contributions by effecting an equal cash  
3 reduction in the gross salary of the employee. The employer shall continue making  
4 payments under this section unless otherwise specifically provided for under the  
5 agency's biennial appropriation or by amendment to law.

6 **SECTION 7. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-52-06. Employer's contribution to retirement plan.**

9 Each governmental unit shall contribute an amount equal to four and twelve-hundredths  
10 percent of the monthly salary or wage of a participating member. Governmental unit  
11 contributions increase by one percent of the monthly salary or wage of a participating member  
12 beginning with the monthly reporting period of January 2012, and with an additional increase of  
13 one percent, beginning with the reporting period of January 2013, and with an additional  
14 increase of one percent, beginning with the monthly reporting period of January 2014. For those  
15 members who elect to exercise their rights under section 54-52-17.14, the employing  
16 governmental unit, or in the case of a member not presently under covered employment the  
17 most recent employing governmental unit, shall pay the associated employer contribution. If the  
18 employee's contribution is paid by the governmental unit under subsection 3 of section  
19 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required  
20 employee's contribution. Each governmental unit shall pay the contribution monthly, or in the  
21 case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund  
22 from its funds appropriated for payroll and salary or any other funds available for these  
23 purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an  
24 election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty  
25 dollars and, as interest, one percent of the amount due for each month of delay or fraction  
26 thereof after the payment became due. In lieu of assessing a civil penalty or one percent per  
27 month, or both, interest at the actuarial rate of return may be assessed for each month the  
28 contributions are delinquent. If contributions are paid within ninety days of the date they became  
29 due, penalty and interest to be paid on delinquent contributions may be waived. An employer is  
30 required to submit contributions for any past eligible employee who was employed after July 1,  
31 1977, for which contributions were not made if the employee would have been eligible to

1 become vested had the employee participated and if the employee elects to join the public  
2 employees retirement system. Employer contributions may not be assessed for eligible service  
3 that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall  
4 report to each session of the legislative assembly the contributions necessary, as determined by  
5 the actuarial study, to maintain the fund's actuarial soundness.

6 **SECTION 8. AMENDMENT.** Section 54-52-06.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-52-06.1. Contribution by supreme and district court judges - Employer**  
9 **contribution.**

10 Each judge of the supreme or district court who is a member of the public employees  
11 retirement system must be assessed and required to pay monthly five percent of the judge's  
12 monthly salary. Member contributions increase by one percent of the judge's monthly salary  
13 beginning with the monthly reporting period of January 2012, and with an additional increase of  
14 one percent, beginning with the reporting period of January 2013, and with an additional  
15 increase of one percent, beginning with the monthly reporting period of January 2014. The  
16 assessment must be deducted and retained out of the judge's salary in equal monthly  
17 installments. The state shall contribute an amount equal to fourteen and fifty-two  
18 one-hundredths percent of the monthly salary of a supreme or district court judge who is a  
19 participating member of the system, which matching contribution must be paid from its funds  
20 appropriated for salary, or from any other funds available for such purposes. State contributions  
21 increase by one percent of the monthly salary of a supreme or district court judge who is a  
22 participating member of the system beginning with the monthly reporting period of  
23 January 2012, and with an additional increase of one percent, beginning with the monthly  
24 reporting period of January 2013, and with an additional increase of one percent, beginning with  
25 the monthly reporting period of January 2014. If the judge's contribution is paid by the state  
26 under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal  
27 to the required judge's contribution.

28 **SECTION 9. AMENDMENT.** Section 54-52-06.2 of the North Dakota Century Code is  
29 amended and reenacted as follows:



1           **54-52-06.2. Contribution by national guard security officers or firefighters - Employer**  
2 **contribution.**

3           Each national guard security officer or firefighter who is a member of the public employees  
4 retirement system is assessed and shall pay monthly four percent of the employee's monthly  
5 salary. Member contributions increase by one-half of one percent of the member's monthly  
6 salary beginning with the monthly reporting period of January 2014. The assessment must be  
7 deducted and retained out of the employee's salary in equal monthly installments. The national  
8 guard security officer's or firefighter's employer shall contribute an amount determined by the  
9 board to be actuarially required to support the level of benefits specified in section 54-52-17.  
10 The employer's 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 assessment is paid by  
12 the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition,  
13 an amount equal to the required national guard security officer's or firefighter's assessment.

14           **SECTION 10. AMENDMENT.** Section 54-52-06.3 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **54-52-06.3. Contribution by peace officers and correctional officers employed by**  
17 **political subdivisions - Employer contribution.**

18           Each peace officer or correctional officer employed by a political subdivision that enters into  
19 an agreement with the retirement board on behalf of its peace officers and correctional officers  
20 separately from its other employees and who is a member of the public employees retirement  
21 system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace  
22 officer or correctional officer contributions increase by one-half of one percent of the member's  
23 monthly salary beginning with the monthly reporting period of January 2012, and with an  
24 additional increase of one-half of one percent, beginning with the monthly reporting period of  
25 January 2013, and with an additional increase of one-half of one percent, beginning with the  
26 monthly reporting period of January 2014. The assessment must be deducted and retained out  
27 of the employee's salary in equal monthly installments. The peace officer's or correctional  
28 officer's employer shall contribute an amount determined by the board to be actuarially required  
29 to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional  
30 officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the

1 employer shall contribute, in addition, an amount equal to the required peace officer's or  
2 correctional officer's assessment.

3 **SECTION 11.** A new section to chapter 54-52 of the North Dakota Century Code is created  
4 and enacted as follows:

5 **Reduction in member and employer contributions.**

6 The required increase in the amount of member and employer contributions under  
7 sections 5, 6, 7, 8, 9, 10, 13, and 15 of this Act must be reduced to the rate in effect on the  
8 effective date of this Act effective on the July first that follows the first valuation of the public  
9 employees retirement system main system showing a ratio of the actuarial value of assets to  
10 the actuarial accrued liability of the public employees retirement system main system that is  
11 equal to or greater than one hundred percent.

12 **SECTION 12. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **54-52.6-01. Definition of terms.**

15 As used in this chapter, unless the context otherwise requires:

- 16 1. "Board" means the public employees retirement system board.
- 17 2. "Deferred member" means a person who elected to receive deferred vested retirement  
18 benefits under chapter 54-52.
- 19 3. "Eligible employee" means a permanent state employee, ~~except an employee of the~~  
20 ~~judicial branch or an employee of the board of higher education and state institutions~~  
21 ~~under the jurisdiction of the board, who is eighteen years or more of age and who is in~~  
22 ~~a position not classified by North Dakota human resource management services. If a~~  
23 ~~participating member loses permanent employee status and becomes a temporary~~  
24 ~~employee, the member may still participate in the defined contribution retirement plan~~  
25 who elects to participate in the retirement plan under this chapter.
- 26 4. "Employee" means any person employed by the state, whose compensation is paid  
27 out of state funds, or funds controlled or administered by the state or paid by the  
28 federal government through any of its executive or administrative officials.
- 29 5. "Employer" means the state of North Dakota.
- 30 6. "Participating member" means an eligible employee who elects to participate in the  
31 defined contribution retirement plan established under this chapter.

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

15           **SECTION 13. AMENDMENT.** Subsection 6 of section 54-52.6-02 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17          6. A participating member who becomes a temporary employee may still participate in  
18          the defined contribution retirement plan upon filing an election with the board within  
19          one hundred eighty days of transferring to temporary employee status. The  
20          participating member may not become a member of the defined benefit plan as a  
21          temporary employee. The temporary employee electing to participate in the defined  
22          contribution retirement plan shall pay monthly to the fund an amount equal to eight  
23          and twelve-hundredths percent times the temporary employee's present monthly  
24          salary. The amount required to be paid by a temporary employee increases by two  
25          percent times the temporary employee's present monthly salary beginning with the  
26          monthly reporting period of January 2012, and with an additional increase of two  
27          percent, beginning with the monthly reporting period of January 2013, and with an  
28          additional increase of two percent, beginning with the monthly reporting period of  
29          January 2014. The temporary employee shall also pay the required monthly  
30          contribution to the retiree health benefit fund established under section 54-52.1-03.2.  
31          This contribution must be recorded as a member contribution pursuant to section

1           54-52.1-03.2. An employer may not pay the temporary employee's contributions. A  
2           temporary employee may continue to participate as a temporary employee until  
3           termination of employment or reclassification of the temporary employee as a  
4           permanent employee.

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

7           **54-52.6-02. Election.**

8           1. ~~The board shall provide an opportunity for each eligible employee who is a member of~~  
9           ~~the public employees retirement system on September 30, 2001, and who has not~~  
10           ~~made a written election under this section to transfer to the defined contribution~~  
11           ~~retirement plan before October 1, 2001, to elect in writing to terminate membership in~~  
12           ~~the public employees retirement system and elect to become a participating member~~  
13           ~~under this chapter. Except as provided in section 54-52.6-03, an election made by an~~  
14           ~~eligible employee under this section is irrevocable. The board shall accept written~~  
15           ~~elections under this section from eligible employees during the period beginning on~~  
16           ~~July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who~~  
17           ~~does not make a written election or who does not file the election during the period~~  
18           ~~specified in this section continues to be a member of the public employees retirement~~  
19           ~~system. An eligible employee who makes and files a written election under this section~~  
20           ~~ceases to be a member of the public employees retirement system effective twelve~~  
21           ~~midnight December 31, 2001; becomes a participating member in the defined~~  
22           ~~contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002;~~  
23           ~~and waives all of that person's rights to a pension, annuity, retirement allowance,~~  
24           ~~insurance benefit, or any other benefit under the public employees retirement system~~  
25           ~~effective December 31, 2001. This section does not affect a person's right to health~~  
26           ~~benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is~~  
27           ~~first employed and entered upon the payroll of that person's employer after~~  
28           ~~September 30, 2001, may make an election to participate in the defined contribution~~  
29           ~~retirement plan established under this chapter at any time during the first six months~~  
30           ~~after the date of employment. If the board, in its sole discretion, determines that the~~  
31           ~~employee was not adequately notified of the employee's option to participate in the~~

1           ~~defined contribution retirement plan, the board may provide the employee a~~  
2           ~~reasonable time within which to make that election, which may extend beyond the~~  
3           ~~original six-month decision window.~~

- 4           2. ~~If an individual who is a deferred member of the public employees retirement system~~  
5           ~~on September 30, 2001, is reemployed and by virtue of that employment is again~~  
6           ~~eligible for membership in the public employees retirement system under chapter~~  
7           ~~54-52, the individual may elect in writing to remain a member of the public employees~~  
8           ~~retirement system or if eligible to participate in the defined contribution retirement plan~~  
9           ~~established under this chapter to terminate membership in the public employees~~  
10           ~~retirement system and become a participating member in the defined contribution~~  
11           ~~retirement plan established under this chapter. An election made by a deferred~~  
12           ~~member under this section is irrevocable. The board shall accept written elections~~  
13           ~~under this section from a deferred member during the period beginning on the date of~~  
14           ~~the individual's reemployment and ending upon the expiration of six months after the~~  
15           ~~date of that reemployment. If the board, in its sole discretion, determines that the~~  
16           ~~employee was not adequately notified of the employee's option to participate in the~~  
17           ~~defined contribution retirement plan, the board may provide the employee a~~  
18           ~~reasonable time within which to make that election, which may extend beyond the~~  
19           ~~original six-month decision window. A deferred member who makes and files a written~~  
20           ~~election to remain a member of the public employees retirement system retains all~~  
21           ~~rights and is subject to all conditions as a member of that retirement system. A~~  
22           ~~deferred member who does not make a written election or who does not file the~~  
23           ~~election during the period specified in this section continues to be a member of the~~  
24           ~~public employees retirement system. A deferred member who makes and files a~~  
25           ~~written election to terminate membership in the public employees retirement system~~  
26           ~~ceases to be a member of the public employees retirement system effective on the~~  
27           ~~last day of the payroll period that includes the date of the election; becomes a~~  
28           ~~participating member in the defined contribution retirement plan under this chapter~~  
29           ~~effective the first day of the payroll immediately following the date of the election; and~~  
30           ~~waives all of that person's rights to a pension, an annuity, a retirement allowance,~~  
31           ~~insurance benefit, or any other benefit under the public employees retirement system.~~

1           effective the last day of the payroll that includes the date of the election. This section  
2           does not affect any right to health benefits or retiree health benefits to which the  
3           deferred member may otherwise be entitled.

- 4           3. An eligible employee who elects to participate in the retirement plan established under  
5           this chapter must remain a participant even if that employee returns to the classified  
6           service or becomes employed by a political subdivision that participates in the public  
7           employees retirement system. The contribution amount must be as provided in this  
8           chapter, regardless of the position in which the employee is employed.

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

- 30          4. After consultation with its actuary, the board shall determine the method by which a  
31          participating member or deferred member may make a written election under this

1 section. If the participating member or deferred member is married at the time of the  
2 election, the election is not effective unless the election is signed by the individual's  
3 spouse. However, the board may waive this requirement if the spouse's signature  
4 cannot be obtained because of extenuating circumstances. The board shall provide an  
5 opportunity for eligible employees who are new members of the public employees  
6 retirement system under chapter 54-52 to transfer to the defined contribution plan  
7 under this chapter pursuant to the rules and policies adopted by the board. An election  
8 made by a member of the public employees retirement system under chapter 54-52 to  
9 transfer to the defined contribution retirement plan under this chapter is irrevocable.  
10 For an individual who elects to transfer membership from the public employees  
11 retirement system under chapter 54-52 to the defined contribution retirement plan  
12 under this chapter, the board shall transfer a lump sum amount from the public  
13 employees retirement system fund to the participating member's account in the  
14 defined contribution retirement plan under this chapter. However, if the individual  
15 terminates employment prior to receiving the lump sum transfer under this section, the  
16 election made is ineffective and the individual remains a member of the public  
17 employees retirement system under chapter 54-52 and retains all the rights and  
18 privileges under that chapter. This section does not affect an individual's right to health  
19 benefits or retiree health benefits under chapter 54-52.1.

20 5-2. If the board receives notification from the internal revenue service that this section or  
21 any portion of this section will cause the public employees retirement system or the  
22 retirement plan established under this chapter to be disqualified for tax purposes  
23 under the Internal Revenue Code, then the portion that will cause the disqualification  
24 does not apply.

25 6-3. A participating member who becomes a temporary employee may still participate in  
26 the defined contribution retirement plan upon filing an election with the board within  
27 one hundred eighty days of transferring to temporary employee status. The  
28 participating member may not become a member of the defined benefit plan as a  
29 temporary employee. The temporary employee electing to participate in the defined  
30 contribution retirement plan shall pay monthly to the fund an amount equal to eight  
31 and twelve-hundredths percent times the temporary employee's present monthly

1 salary. The amount required to be paid by a temporary employee increases by two  
2 percent times the temporary employee's present monthly salary beginning with the  
3 monthly reporting period of January 2012, and with an additional increase of two  
4 percent, beginning with the reporting period of January 2013. The temporary  
5 employee shall also pay the required monthly contribution to the retiree health benefit  
6 fund established under section 54-52.1-03.2. This contribution must be recorded as a  
7 member contribution pursuant to section 54-52.1-03.2. An employer may not pay the  
8 temporary employee's contributions. A temporary employee may continue to  
9 participate as a temporary employee until termination of employment or  
10 reclassification of the temporary employee as a permanent employee.

11 7.4. A former participating member who has accepted a retirement distribution pursuant to  
12 section 54-52.6-13 and who subsequently becomes employed by an entity different  
13 from the employer with which the member was employed at the time the member  
14 retired but which does participate in any state-sponsored retirement plan may, before  
15 reenrolling in the defined contribution retirement plan, elect to permanently waive  
16 future participation in the defined contribution retirement plan, whatever plan in which  
17 the new employing entity participates, and the retiree health program and maintain  
18 that member's retirement status. Neither the member nor the employer are required to  
19 make any future retirement contributions on behalf of that employee.

20 **SECTION 15. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **54-52.6-09. Contributions - Penalty.**

- 23 1. Each participating member shall contribute monthly four percent of the monthly salary  
24 or wage paid to the participant, and this assessment must be deducted from the  
25 participant's salary in equal monthly installments commencing with the first month of  
26 participation in the defined contribution retirement plan established under this chapter.  
27 Participating member contributions increase by one percent of the monthly salary or  
28 wage paid to the participant beginning with the monthly reporting period of  
29 January 2012, and with an additional increase of one percent, beginning with the  
30 reporting period of January 2013, and with an additional increase of one percent,  
31 beginning with the monthly reporting period of January 2014.



- 1           2.    The employer shall contribute an amount equal to four and twelve-hundredths percent  
2           of the monthly salary or wage of a participating member. Employer contributions  
3           increase by one percent of the monthly salary or wage of a participating member  
4           beginning with the monthly reporting period of January 2012, and with an additional  
5           increase of one percent, beginning with the monthly reporting period of January 2013,  
6           and with an additional increase of one percent, beginning with the monthly reporting  
7           period of January 2014. If the employee's contribution is paid by the employer under  
8           subsection 3, the employer shall contribute, in addition, an amount equal to the  
9           required employee's contribution. The employer shall pay monthly such contribution  
10          into the participating member's account from its funds appropriated for payroll and  
11          salary or any other funds available for such purposes. If the employer fails to pay the  
12          contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one  
13          percent of the amount due for each month of delay or fraction thereof after the  
14          payment became due.
- 15          3.    Each employer, at its option, may pay the employee contributions required by this  
16          section for all compensation earned after December 31, 1999. The amount paid must  
17          be paid by the employer in lieu of contributions by the employee. If the employer  
18          decides not to pay the contributions, the amount that would have been paid will  
19          continue to be deducted from the employee's compensation. If contributions are paid  
20          by the employer, they must be treated as employer contributions in determining tax  
21          treatment under this code and the federal Internal Revenue Code. Contributions paid  
22          by the employer may not be included as gross income of the employee in determining  
23          tax treatment under this code and the federal Internal Revenue Code until they are  
24          distributed or made available. The employer shall pay these employee contributions  
25          from the same source of funds used in paying compensation to the employee. The  
26          employer shall pay these contributions by effecting an equal cash reduction in the  
27          gross salary of the employee or by an offset against future salary increases or by a  
28          combination of a reduction in gross salary and offset against future salary increases.  
29          Employee contributions paid by the employer must be treated for the purposes of this  
30          chapter in the same manner and to the same extent as employee contributions made  
31          before the date on which employee contributions were assumed by the employer. An

1            employer shall exercise its option under this subsection by reporting its choice to the  
2            board in writing.

3            **SECTION 16. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT**

4            **PLANS.** During the 2013-14 interim, the legislative management shall consider studying the  
5            feasibility and desirability of existing and possible state retirement plans. The study must include  
6            an analysis of both a defined benefit plan and a defined contribution plan with considerations  
7            and possible consequences for transitioning to a state defined contribution plan. The study may  
8            not be conducted by the employee benefits programs committee. The legislative management  
9            shall report its findings and recommendations, together with any legislation needed to  
10           implement the recommendations, to the sixty-fourth legislative assembly.

11           **SECTION 17. APPROPRIATION.** There is appropriated from special funds derived from  
12           public employees retirement system income not otherwise appropriated, the sum of \$22,000, or  
13           so much of the sum as may be necessary, to the public employees retirement system board for  
14           the purpose of implementing this Act, for the biennium beginning July 1, 2013, and ending  
15           June 30, 2015.

16           **SECTION 18. EFFECTIVE DATE.** Sections 4, 12, and 14 of this Act become effective on  
17           October 1, 2013.

18           **SECTION 19. EXPIRATION DATE - SUSPENSION.** Sections 4, 12, and 14 of this Act are  
19           effective through July 31, 2017, and after that date are ineffective. Section 54-52.6-03 is  
20           suspended from October 1, 2013, through July 31, 2017. Section 54-52.6-03, as it existed on  
21           September 30, 2013, becomes effective on August 1, 2017.