

Introduced by

Appropriations Committee

(At the request of the Public Employees Retirement System)

1 A BILL for an Act to amend and reenact section 54-52-02.9, subsection 2 of section 54-52-05,  
2 and sections 54-52-06, 54-52.6-02, and 54-52.6-09 of the North Dakota Century Code, relating  
3 to increased employer and employee contributions under the public employees retirement  
4 system defined benefit and defined contribution plans.

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

6 **SECTION 1. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-52-02.9. Participation by temporary employees.**

9 A temporary employee may elect, within one hundred eighty days of beginning employment,  
10 to participate in the public employees retirement system and receive credit for service after  
11 enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight  
12 and twelve-hundredths percent times the temporary employee's present monthly salary. The  
13 amount required to be paid by a temporary employee increases by two percent times the  
14 temporary employee's present monthly salary beginning with the monthly reporting period of  
15 January 2012,~~and;~~ with an additional two percent increase, beginning with the reporting period  
16 of January 2013,~~and;~~ with an additional increase of two percent, beginning with the monthly  
17 reporting period of January 2014; and with an additional increase of two percent, beginning with  
18 the monthly reporting period of January 2018. The temporary employee shall also pay the  
19 required monthly contribution to the retiree health benefit fund established under section  
20 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section  
21 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary  
22 employee may continue to participate as a temporary employee in the public employees  
23 retirement system until termination of employment or reclassification of the temporary employee

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

3 **SECTION 2. AMENDMENT.** Subsection 2 of section 54-52-05 of the North Dakota Century  
4 Code is amended and reenacted as follows:

5 2. Each member must be assessed and required to pay monthly four percent of the  
6 monthly salary or wage paid to the member, and such assessment must be deducted  
7 and retained out of such salary in equal monthly installments commencing with the  
8 first month of employment. Member contributions increase by one percent of the  
9 monthly salary or wage paid to the member beginning with the monthly reporting  
10 period of January 2012,~~and;~~ with an additional increase of one percent, beginning  
11 with the monthly reporting period of January 2013,~~and;~~ with an additional increase of  
12 one percent, beginning with the monthly reporting period of January 2014; and with an  
13 additional increase of one percent, beginning with the monthly reporting period of  
14 January 2018.

15 **SECTION 3. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **54-52-06. Employer's contribution to retirement plan - Report to the legislative**  
18 **assembly.**

19 1. Each governmental unit shall contribute an amount equal to four and  
20 twelve-hundredths percent of the monthly salary or wage of a participating member.  
21 Governmental unit contributions increase by one percent of the monthly salary or  
22 wage of a participating member beginning with the monthly reporting period of  
23 January 2012,~~and;~~ with an additional increase of one percent, beginning with the  
24 reporting period of January 2013,~~and;~~ with an additional increase of one percent,  
25 beginning with the monthly reporting period of January 2014; and with an additional  
26 increase of one percent, beginning with the monthly reporting period of January 2018.

27 2. For those members who elect to exercise their rights under section 54-52-17.14, the  
28 employing governmental unit, or in the case of a member not presently under covered  
29 employment the most recent employing governmental unit, shall pay the associated  
30 employer contribution. If the employee's contribution is paid by the governmental unit  
31 under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition,

1 an amount equal to the required employee's contribution. Each governmental unit  
2 shall pay the contribution monthly, or in the case of an election made pursuant to  
3 section 54-52-17.14 a lump sum, into the retirement fund from ~~its~~the governmental  
4 unit's funds appropriated for payroll and salary or any other funds available for these  
5 purposes. Any governmental unit failing to pay the contributions monthly, or in the  
6 case of an election made pursuant to section 54-52-17.14 a lump sum, is subject to a  
7 civil penalty of fifty dollars and, as interest, one percent of the amount due for each  
8 month of delay or fraction thereof after the payment became due. In lieu of assessing  
9 a civil penalty or one percent per month, or both, interest at the actuarial rate of return  
10 may be assessed for each month the contributions are delinquent. If contributions are  
11 paid within ninety days of the date ~~they~~the contributions became due, penalty and  
12 interest to be paid on delinquent contributions may be waived.

13 3. An employer is required to submit contributions for any past eligible employee who  
14 was employed after July 1, 1977, for which contributions were not made if the  
15 employee would have been eligible to become vested had the employee participated  
16 and if the employee elects to join the public employees retirement system. Employer  
17 contributions may not be assessed for eligible service that an employee has waived  
18 pursuant to subsection 1 of section 54-52-05.

19 4. The board shall report to each session of the legislative assembly the contributions  
20 necessary, as determined by the actuarial study, to maintain the fund's actuarial  
21 soundness.

22 **SECTION 4. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **54-52.6-02. (Effective through July 31, 2017) Election.**

25 1. The board shall provide an opportunity for eligible employees who are new members  
26 of the public employees retirement system under chapter 54-52 to transfer to the  
27 defined contribution plan under this chapter pursuant to the rules and policies adopted  
28 by the board. An election made by a member of the public employees retirement  
29 system under chapter 54-52 to transfer to the defined contribution retirement plan  
30 under this chapter is irrevocable. For an individual who elects to transfer membership  
31 from the public employees retirement system under chapter 54-52 to the defined

1 contribution retirement plan under this chapter, the board shall transfer a lump sum  
2 amount from the public employees retirement system fund to the participating  
3 member's account in the defined contribution retirement plan under this chapter.  
4 However, if the individual terminates employment prior to receiving the lump sum  
5 transfer under this section, the election made is ineffective and the individual remains  
6 a member of the public employees retirement system under chapter 54-52 and retains  
7 all the rights and privileges under that chapter. This section does not affect an  
8 individual's right to health benefits or retiree health benefits under chapter 54-52.1.

9 2. If the board receives notification from the internal revenue service that this section or  
10 any portion of this section will cause the public employees retirement system or the  
11 retirement plan established under this chapter to be disqualified for tax purposes  
12 under the Internal Revenue Code, then the portion that will cause the disqualification  
13 does not apply.

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

1 termination of employment or reclassification of the temporary employee as a  
2 permanent employee.

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

12 **(Effective after July 31, 2017) Election.**

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

1           54-52.1. An eligible employee who is first employed and entered upon the payroll of  
2           that ~~person's~~individual's employer after September 30, 2001, may make an election to  
3           participate in the defined contribution retirement plan established under this chapter at  
4           any time during the first six months after the date of employment. If the board, in its  
5           sole discretion, determines ~~that~~ the employee was not adequately notified of the  
6           employee's option to participate in the defined contribution retirement plan, the board  
7           may provide the employee a reasonable time within which to make that election, which  
8           may extend beyond the original six-month decision window.

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

1 last day of the payroll period that includes the date of the election; becomes a  
2 participating member in the defined contribution retirement plan under this chapter  
3 effective the first day of the payroll immediately following the date of the election; and  
4 waives all of that ~~person's~~individual's rights to a pension, an annuity, a retirement  
5 allowance, insurance benefit, or any other benefit under the public employees  
6 retirement system effective the last day of the payroll that includes the date of the  
7 election. This section does not affect any right to health benefits or retiree health  
8 benefits to which the deferred member may otherwise be entitled.

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

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

1 board, the member may transfer any available balance as determined by the  
2 provisions of the alternate retirement plan into the member's account under this  
3 chapter.

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

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

15 6. A participating member who becomes a temporary employee may still participate in  
16 the defined contribution retirement plan upon filing an election with the board within  
17 one hundred eighty days of transferring to temporary employee status. The  
18 participating member may not become a member of the defined benefit plan as a  
19 temporary employee. The temporary employee electing to participate in the defined  
20 contribution retirement plan shall pay monthly to the fund an amount equal to eight  
21 and twelve-hundredths percent times the temporary employee's present monthly  
22 salary. The amount required to be paid by a temporary employee increases by two  
23 percent times the temporary employee's present monthly salary beginning with the  
24 monthly reporting period of January 2012,~~and;~~ with an additional increase of two  
25 percent, beginning with the monthly reporting period of January 2013,~~and;~~ with an  
26 additional increase of two percent, beginning with the monthly reporting period of  
27 January 2014; and with an additional increase of two percent, beginning with the  
28 monthly reporting period of January 2018. The temporary employee shall also pay the  
29 required monthly contribution to the retiree health benefit fund established under  
30 section 54-52.1-03.2. This contribution must be recorded as a member contribution  
31 pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's



1 contributions. A temporary employee may continue to participate as a temporary  
2 employee until termination of employment or reclassification of the temporary  
3 employee as a permanent employee.

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

13 **SECTION 5. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **54-52.6-09. Contributions - Penalty.**

16 1. Each participating member shall contribute monthly four percent of the monthly salary  
17 or wage paid to the participant, and this assessment must be deducted from the  
18 participant's salary in equal monthly installments commencing with the first month of  
19 participation in the defined contribution retirement plan established under this chapter.  
20 Participating member contributions increase by one percent of the monthly salary or  
21 wage paid to the participant beginning with the monthly reporting period of  
22 January 2012,~~and;~~ with an additional increase of one percent, beginning with the  
23 reporting period of January 2013,~~and;~~ with an additional increase of one percent,  
24 beginning with the monthly reporting period of January 2014; and with an additional  
25 increase of one percent, beginning with the monthly reporting period of January 2018.  
26 2. The employer shall contribute an amount equal to four and twelve-hundredths percent  
27 of the monthly salary or wage of a participating member. Employer contributions  
28 increase by one percent of the monthly salary or wage of a participating member  
29 beginning with the monthly reporting period of January 2012,~~and;~~ with an additional  
30 increase of one percent, beginning with the monthly reporting period of January 2013,~~-~~  
31 ~~and;~~ with an additional increase of one percent, beginning with the monthly reporting

1           period of January 2014; and with an additional increase of one percent, beginning with  
2           the monthly reporting period of January 2018. If the employee's contribution is paid by  
3           the employer under subsection 3, the employer shall contribute, in addition, an amount  
4           equal to the required employee's contribution. The employer shall pay monthly such  
5           contribution into the participating member's account from ~~its~~the employer's funds  
6           appropriated for payroll and salary or any other funds available for such purposes. If  
7           the employer fails to pay the contributions monthly, ~~it~~the employer is subject to a civil  
8           penalty of fifty dollars and, as interest, one percent of the amount due for each month  
9           of delay or fraction thereof after the payment became due.

- 10        3. Each employer, at ~~its~~the employer's option, may pay the employee contributions  
11        required by this section for all compensation earned after December 31, 1999. The  
12        amount paid must be paid by the employer in lieu of contributions by the employee. If  
13        the employer decides not to pay the contributions, the amount that would have been  
14        paid will continue to be deducted from the employee's compensation. If contributions  
15        are paid by the employer, ~~they~~the contributions must be treated as employer  
16        contributions in determining tax treatment under this code and the federal Internal  
17        Revenue Code. Contributions paid by the employer may not be included as gross  
18        income of the employee in determining tax treatment under this code and the federal  
19        Internal Revenue Code until ~~they~~the contributions are distributed or made available.  
20        The employer shall pay these employee contributions from the same source of funds  
21        used in paying compensation to the employee. The employer shall pay these  
22        contributions by effecting an equal cash reduction in the gross salary of the employee  
23        or by an offset against future salary increases or by a combination of a reduction in  
24        gross salary and offset against future salary increases. Employee contributions paid  
25        by the employer must be treated for the purposes of this chapter in the same manner  
26        and to the same extent as employee contributions made before the date on which  
27        employee contributions were assumed by the employer. An employer shall exercise  
28        ~~its~~the employer's option under this subsection by reporting ~~its~~the employer's choice to  
29        the board in writing.