

**HOUSE BILL NO. 1264**

Introduced by

Representatives Rick C. Becker, Laning, Olson, Simons

Senators Dever, Myrdal, Unruh

1 A BILL for an Act to amend and reenact sections 15-10-17 and 15-10-28, subsection 1 of  
2 section 54-44.4-11, section 54-52.6-02, and subsection 6 of section 54-65-02 of the North  
3 Dakota Century Code, relating to nonresident tuition rates; and to provide an effective date.

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

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

7 **15-10-17. Specific powers and duties of the state board of higher education.**

8 The state board of higher education has all the powers and shall perform all the duties  
9 necessary to the control and management of the institutions described in this chapter. In  
10 addition to the powers and duties specified in section 6 of article VIII of the Constitution of North  
11 Dakota, the board may:

- 12 1. a. Appoint and remove the president or other faculty head, and the professors,  
13 instructors, teachers, officers, and other employees of the several institutions  
14 under its control, and to fix their salaries within the limits of legislative  
15 appropriations therefor, and to fix the terms of office and to prescribe the duties  
16 thereof, provided that the consideration of the appointment or removal of any  
17 such personnel shall be in executive session if the board chooses unless the  
18 individual involved requests that the meeting be open to other individuals or to  
19 the public.
- 20 b. Appoint and remove the commissioner of higher education, fix the  
21 commissioner's salary within the limits of legislative appropriations, and prescribe  
22 the commissioner's duties.

- 1           c. Appoint and remove all university system office personnel, fix their salaries within  
2           the limits of legislative appropriations, fix their terms of office, and prescribe their  
3           duties.
- 4           2. Authorize the employment of law enforcement officers having concurrent jurisdiction  
5           with other law enforcement officers to enforce laws and regulations at its institutions.
- 6           3. Set ~~tuition and~~ fees.
- 7           4. Establish the rate of tuition for each institution, subject to the provisions of section  
8           15-10-28.
- 9           5. a. Establish a retirement program as an alternative to chapter 15-39.1 for university  
10           system employees subject to the following guidelines:
- 11           (1) Benefits under the program must be provided through annuity contracts  
12           purchased by the board but which become the property of the participants;
- 13           (2) The cost of the annuity contracts must be defrayed by contributions made  
14           pursuant to rules of the state board of higher education;
- 15           (3) Eligible employees appointed before July 1, 1973, shall participate in the  
16           alternate retirement program only by their individual election. When the  
17           electing eligible employee is a member of the teachers' fund for retirement,  
18           the employee's assessments and employer's contributions together with  
19           interest credited at the current rate for one-year certificates then being paid  
20           by the Bank of North Dakota must be transferred to the employee's account  
21           in the alternate program. The election must be made before July 1, 1980,  
22           and shall relinquish all rights the eligible employee or the employee's  
23           beneficiary may have to benefits provided in chapters 15-39 and 15-39.2;  
24           and
- 25           (4) Employees of the university system who are members of the public  
26           employees retirement system under chapter 54-52 or 54-52.6 and who  
27           become entitled to participate in the alternate retirement program are  
28           entitled to a special annuity purchase in the alternate retirement program in  
29           accordance with this subdivision. An eligible employee who consents to  
30           have that employee's contribution included is entitled to have that  
31           employee's contribution and employer's contribution, with interest, in the

1 public employees retirement system fund, used by the retirement board of  
2 the public employees retirement system to purchase for that employee an  
3 annuity in the alternate retirement program in lieu of any other rights under  
4 the public employees retirement fund. However, before the employer's  
5 contribution may be used for an annuity purchase, the employee's  
6 combined years of service with the public employees retirement system and  
7 the alternate retirement program must equal or exceed the years of service  
8 necessary to be eligible for retirement benefits under the public employees  
9 retirement system. An employee who transferred from the public employees  
10 retirement system before March 30, 1987, and who received a refund of that  
11 employee's contribution is entitled to have the employer's contribution, with  
12 interest, used to purchase an annuity even if that employee did not  
13 purchase an annuity in the alternate employee program with the employee's  
14 contribution. If an employee makes the election allowed under this  
15 subdivision, that employee relinquishes all rights the employee or any of the  
16 employee's beneficiaries may have had to benefits provided under chapters  
17 54-52 and 54-52.6.

- 18 b. Provide for the administration of the alternate retirement program and establish  
19 rules for the program consistent with this subsection. This subsection does not  
20 derogate any existing retirement programs approved by the board.

21 5-6. Determine policy for purchasing by the university system in coordination with the office  
22 of management and budget as provided by law.

23 6-7. Establish by rule an early retirement program for faculty and officers of the board as  
24 defined by the board. The limitations on severance pay pursuant to section 54-14-04.3  
25 and on requiring the employee to pay contributions to continue on the state uniform  
26 group insurance program upon retirement or upon termination of employment  
27 pursuant to section 54-52.1-03 do not apply to the early retirement program.

28 7-8. Adopt rules to protect the confidentiality of student records, medical records, and,  
29 consistent with section 44-04-18.4, trade secret, proprietary, commercial, and financial  
30 information.

1     ~~8-9.~~ Authorize and encourage university system entities to enter into partnerships, limited  
2           liability companies, joint ventures, or other contractual arrangements with private  
3           business and industry for the purpose of business or industrial development or  
4           fostering basic and applied research or technology transfer.

5     ~~9-10.~~ Adopt rules promoting research, encouraging development of intellectual property and  
6           other inventions and discoveries by university system employees, and protecting and  
7           marketing the inventions and discoveries. The rules must govern ownership or transfer  
8           of ownership rights and distribution of income that may be derived from an invention or  
9           discovery resulting from research or employment in the university system. The rules  
10          may provide for transfer of ownership rights or distribution of income to a private,  
11          nonprofit entity created for the support of the university system or one of its  
12          institutions.

13        **SECTION 2. AMENDMENT.** Section 15-10-28 of the North Dakota Century Code is  
14    amended and reenacted as follows:

15        **15-10-28. Agreements with other states' institutions of higher learning and regional**  
16    **education compacts.**

17        1. The state board of higher education may enter into agreements with institutions of  
18          higher learning in other states and regional education compacts. The board, subject to  
19          the limits of legislative appropriations, may make such expenditures as are necessary  
20          for the purpose of utilizing the educational facilities of such institutions for teaching  
21          North Dakota students. In addition, the board may enter into agreements with  
22          institutions of higher learning in other states and regional education compacts for the  
23          acceptance of students from other states in North Dakota institutions of higher  
24          learning.

25        2. If the state board of higher education enters an agreement to accept students from  
26        another state, the board shall establish the reciprocity tuition rates for the nonresident  
27        students as follows:

28        a. At least one hundred twenty-five percent of the resident tuition rate for  
29        nonresident students from eligible states under the midwestern higher education  
30        compact or the western interstate commission for higher education;

- 1            b. At least one hundred fifteen percent of the resident tuition rate for nonresident  
2            students from the state of Minnesota; and  
3            c. At least two hundred percent of the resident tuition rate for nonresident students  
4            from any other state.  
5            3. Any student accepted to an institution under the control of the state board of higher  
6            education before July 1, 2018, is not subject to the reciprocity tuition rates under this  
7            section during the time the nonresident student remains a full-time student at that  
8            institution.

9            **SECTION 3. AMENDMENT.** Subsection 1 of section 54-44.4-11 of the North Dakota  
10 Century Code is amended and reenacted as follows:

- 11            1. A procurement not exceeding the amount established by written directive of the  
12            director of the office of management and budget or by the state board of higher  
13            education under subsection 56 of section 15-10-17 may be made in accordance with  
14            small purchase procedures.

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

17            **54-52.6-02. (Effective through July 31, 2017) Election.**

- 18            1. The board shall provide an opportunity for eligible employees who are new members  
19            of the public employees retirement system under chapter 54-52 to transfer to the  
20            defined contribution plan under this chapter pursuant to the rules and policies adopted  
21            by the board. An election made by a member of the public employees retirement  
22            system under chapter 54-52 to transfer to the defined contribution retirement plan  
23            under this chapter is irrevocable. For an individual who elects to transfer membership  
24            from the public employees retirement system under chapter 54-52 to the defined  
25            contribution retirement plan under this chapter, the board shall transfer a lump sum  
26            amount from the public employees retirement system fund to the participating  
27            member's account in the defined contribution retirement plan under this chapter.  
28            However, if the individual terminates employment prior to receiving the lump sum  
29            transfer under this section, the election made is ineffective and the individual remains  
30            a member of the public employees retirement system under chapter 54-52 and retains

- 1           all the rights and privileges under that chapter. This section does not affect an  
2           individual's right to health benefits or retiree health benefits under chapter 54-52.1.
- 3           2. If the board receives notification from the internal revenue service that this section or  
4           any portion of this section will cause the public employees retirement system or the  
5           retirement plan established under this chapter to be disqualified for tax purposes  
6           under the Internal Revenue Code, then the portion that will cause the disqualification  
7           does not apply.
- 8           3. A participating member who becomes a temporary employee may still participate in  
9           the defined contribution retirement plan upon filing an election with the board within  
10          one hundred eighty days of transferring to temporary employee status. The  
11          participating member may not become a member of the defined benefit plan as a  
12          temporary employee. The temporary employee electing to participate in the defined  
13          contribution retirement plan shall pay monthly to the fund an amount equal to eight  
14          and twelve-hundredths percent times the temporary employee's present monthly  
15          salary. The amount required to be paid by a temporary employee increases by two  
16          percent times the temporary employee's present monthly salary beginning with the  
17          monthly reporting period of January 2012, and with an additional increase of two  
18          percent, beginning with the monthly reporting period of January 2013, and with an  
19          additional increase of two percent, beginning with the monthly reporting period of  
20          January 2014. The temporary employee shall also pay the required monthly  
21          contribution to the retiree health benefit fund established under section 54-52.1-03.2.  
22          This contribution must be recorded as a member contribution pursuant to section  
23          54-52.1-03.2. An employer may not pay the temporary employee's contributions. A  
24          temporary employee may continue to participate as a temporary employee until  
25          termination of employment or reclassification of the temporary employee as a  
26          permanent employee.
- 27          4. A former participating member who has accepted a retirement distribution pursuant to  
28          section 54-52.6-13 and who subsequently becomes employed by an entity different  
29          from the employer with which the member was employed at the time the member  
30          retired but which does participate in any state-sponsored retirement plan may, before  
31          re-enrolling in the defined contribution retirement plan, elect to permanently waive

1 future participation in the defined contribution retirement plan, whatever plan in which  
2 the new employing entity participates, and the retiree health program and maintain  
3 that member's retirement status. Neither the member nor the employer are required to  
4 make any future retirement contributions on behalf of that employee.

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

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

1 reasonable time within which to make that election, which may extend beyond the  
2 original six-month decision window.

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



1 does not affect any right to health benefits or retiree health benefits to which the  
2 deferred member may otherwise be entitled.

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

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

29 4. After consultation with its actuary, the board shall determine the method by which a  
30 participating member or deferred member may make a written election under this  
31 section. If the participating member or deferred member is married at the time of the

1 election, the election is not effective unless the election is signed by the individual's  
2 spouse. However, the board may waive this requirement if the spouse's signature  
3 cannot be obtained because of extenuating circumstances.

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

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

28 7. A former participating member who has accepted a retirement distribution pursuant to  
29 section 54-52.6-13 and who subsequently becomes employed by an entity different  
30 from the employer with which the member was employed at the time the member  
31 retired but which does participate in any state-sponsored retirement plan may, before

1 re-enrolling in the defined contribution retirement plan, elect to permanently waive  
2 future participation in the defined contribution retirement plan, whatever plan in which  
3 the new employing entity participates, and the retiree health program and maintain  
4 that member's retirement status. Neither the member nor the employer are required to  
5 make any future retirement contributions on behalf of that employee.

6 **SECTION 5. AMENDMENT.** Subsection 6 of section 54-65-02 of the North Dakota Century  
7 Code is amended and reenacted as follows:

8 6. The board rules adopted under subsection 910 of section 15-10-17, relating to  
9 ownership of intellectual property, inventions, and discoveries, must address activities  
10 and issues unique to centers.

11 **SECTION 6. EFFECTIVE DATE.** Section 2 of this Act becomes effective July 1, 2018.