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Sixty-second  
Legislative Assembly  
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Wald

1 A BILL for an Act to amend and reenact sections 39-03.1-02 and 39-03.1-07, subsection 4 of  
2 section 54-52-01, and sections 54-52-02.3, 54-52-02.5, 54-52-02.9, 54-52.6-01, 54-52.6-02,  
3 and 54-52.6-09 of the North Dakota Century Code, relating to a defined contribution retirement  
4 plan for state employees; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 39-03.1-02 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **39-03.1-02. North Dakota highway patrolmen's retirement system.** A retirement  
9 system is hereby established for the members of the North Dakota highway patrol.  
10 Notwithstanding any other provision of law, after July 31, 2011, the North Dakota highway  
11 patrolmen's retirement system is closed to new members.

12 **SECTION 2. AMENDMENT.** Section 39-03.1-07 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **39-03.1-07. Membership.** Except as otherwise provided, each member of the patrol,  
15 including the superintendent and assistant superintendent, first employed before August 1,  
16 2011, shall contribute to the fund, and is eligible to nominate and vote for members of the  
17 board. Personnel of the truck regulatory division of the state highway department transferred to  
18 the highway patrol after July 1, 1983, are not required to contribute to the fund. They are  
19 members of the public employees retirement system and social security system.

20 **SECTION 3. AMENDMENT.** Subsection 4 of section 54-52-01 of the North Dakota  
21 Century Code is amended and reenacted as follows:

22 4. "Eligible employee" means all permanent employees who, except for employees of  
23 a political subdivision or employees of the board of higher education and state  
24 institutions under the jurisdiction of the board, are first employed before August 1,

1           2011, and who meet all of the eligibility requirements set by this chapter and who  
2           are eighteen years or more of age, and includes appointive and elective officials  
3           under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching  
4           employees of the superintendent of public instruction, including the superintendent  
5           of public instruction, who elect to transfer from the teachers' fund for retirement to  
6           the public employees retirement system under section 54-52-02.13, and  
7           employees of the state board for career and technical education who elect to  
8           transfer from the teachers' fund for retirement to the public employees retirement  
9           system under section 54-52-02.14. Eligible employee does not include  
10          nonclassified state employees who elect to become members of the retirement  
11          plan established under chapter 54-52.6 but does include employees of the judicial  
12          branch first employed before August 1, 2011, employees of a political subdivision,  
13          and employees of the board of higher education and state institutions under the  
14          jurisdiction of the board.

15           **SECTION 4. AMENDMENT.** Section 54-52-02.3 of the North Dakota Century Code is  
16          amended and reenacted as follows:

17           **54-52-02.3. Newly elected supreme and district court judges.** After July 1, 1973,  
18          ~~any person~~ and before August 1, 2011, an individual elected or appointed to the office of judge  
19          of the supreme court or judge of the district court for the first time must, from and after the date  
20          that ~~person~~ individual qualifies and takes office, be a participating member of the public  
21          employees retirement system under this chapter. ~~Any person~~ An individual so elected or  
22          appointed is not eligible for membership in or for receipt of benefits from the retirement program  
23          provided by chapter 27-17. After August 1, 2011, an individual elected or appointed to the  
24          office of judge of the supreme court or judge of the district court for the first time must, from and  
25          after the date that individual qualifies and takes office, be a participating member of the  
26          retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the  
27          first time" means ~~a person~~ an individual elected or appointed, who, after July 1, 1973, does not  
28          hold office as a judge of the supreme court or the district court at the time of the ~~person's~~  
29          individual's election or appointment.

30           **SECTION 5. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is  
31          amended and reenacted as follows:

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

12           **SECTION 6. 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.** A Before August 1, 2011, a  
15 temporary employee may elect, within one hundred eighty days of beginning employment, to  
16 participate in the public employees retirement system under this chapter and receive credit for  
17 service after enrollment. After July 31, 2011, a temporary employee may elect, within one  
18 hundred eighty days of beginning employment, to participate in the retirement plan established  
19 under chapter 54-52.6. The temporary employee shall pay monthly to the fund an amount  
20 equal to eight and twelve-hundredths percent times the temporary employee's present monthly  
21 salary. The temporary employee shall also pay the required monthly contribution to the retiree  
22 health benefit fund established under section 54-52.1-03.2. This contribution must be recorded  
23 as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the  
24 temporary employee's contributions. A temporary employee may continue to participate as a  
25 temporary employee in the public employees retirement system until termination of employment  
26 or reclassification of the temporary employee as a permanent employee. A temporary  
27 employee may not purchase any additional credit, including additional credit under section  
28 54-52-17.4 or past service under section 54-52-02.6.

29           **SECTION 7. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise  
2 requires:

- 3           1. "Board" means the public employees retirement system board.
- 4           2. "Deferred member" means a person who elected to receive deferred vested  
5 retirement benefits under chapter 54-52.
- 6           3. "Eligible employee" means a permanent state employee, except an employee of  
7 the ~~judicial branch or an employee of the~~ board of higher education and state  
8 institutions under the jurisdiction of the board, who is eighteen years or more of  
9 age and ~~who is in a position not classified by North Dakota human resource~~  
10 ~~management services~~ a temporary employee who elects to participate after  
11 July 31, 2011, in the retirement plan established under this chapter. If a  
12 participating member loses permanent employee status and becomes a temporary  
13 employee, the member may still participate in the defined contribution retirement  
14 plan.
- 15           4. "Employee" means any person employed by the state, whose compensation is  
16 paid out of state funds, or funds controlled or administered by the state or paid by  
17 the federal government through any of its executive or administrative officials.
- 18           5. "Employer" means the state of North Dakota.
- 19           6. "Participating member" means an eligible employee who ~~elects to participate~~  
20 participates in the defined contribution retirement plan established under this  
21 chapter.
- 22           7. "Permanent employee" means a state employee whose services are not limited in  
23 duration and who is filling an approved and regularly funded position and is  
24 employed twenty hours or more per week and at least five months each year.
- 25           8. "Wages" and "salaries" means earnings in eligible employment under this chapter  
26 reported as salary on a federal income tax withholding statement plus any salary  
27 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h),  
28 or 457. "Salary" does not include fringe benefits such as payments for unused sick  
29 leave, personal leave, vacation leave paid in a lump sum, overtime, housing  
30 allowances, transportation expenses, early retirement, incentive pay, severance  
31 pay, medical insurance, workforce safety and insurance benefits, disability

1 insurance premiums or benefits, or salary received by a member in lieu of  
2 previously employer-provided fringe benefits under an agreement between an  
3 employee and a participating employer. Bonuses may be considered as salary  
4 under this section if reported and annualized pursuant to rules adopted by the  
5 board.

6 **SECTION 8. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-52.6-02. Election.**

9 1. The board shall provide an opportunity for each eligible employee who is a  
10 member of the public employees retirement system on September 30, 2001, and  
11 who has not made a written election under this section to transfer to the defined  
12 contribution retirement plan before October 1, 2001, to elect in writing to terminate  
13 membership in the public employees retirement system and elect to become a  
14 participating member under this chapter. Except as provided in section  
15 54-52.6-03, an election made by an eligible employee under this section is  
16 irrevocable. The board shall accept written elections under this section from  
17 eligible employees during the period beginning on July 1, 1999, and ending  
18 12:01 a.m. December 14, 2001. An eligible employee who does not make a  
19 written election or who does not file the election during the period specified in this  
20 section continues to be a member of the public employees retirement system. An  
21 eligible employee who makes and files a written election under this section ceases  
22 to be a member of the public employees retirement system effective twelve  
23 midnight December 31, 2001; becomes a participating member in the defined  
24 contribution retirement plan under this chapter effective 12:01 a.m. January 1,  
25 2002; and waives all of that person's rights to a pension, annuity, retirement  
26 allowance, insurance benefit, or any other benefit under the public employees  
27 retirement system effective December 31, 2001. This section does not affect a  
28 person's right to health benefits or retiree health benefits under chapter 54-52.1.  
29 An eligible employee who is first employed and entered upon the payroll of that  
30 person's employer after September 30, 2001, and before August 1, 2011, may  
31 make an election to participate in the defined contribution retirement plan

1 established under this chapter at any time during the first six months after the date  
2 of employment. If the board, in its sole discretion, determines that the employee  
3 was not adequately notified of the employee's option to participate in the defined  
4 contribution retirement plan, the board may provide the employee a reasonable  
5 time within which to make that election, which may extend beyond the original  
6 six-month decision window.

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

- 1           adopted by the board, the member may transfer any available balance as  
2           determined by the provisions of the alternate retirement plan into the member's  
3           account under this 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  
7           the election, the election is not effective unless the election is signed by the  
8           individual's spouse. However, the board may waive this requirement if the  
9           spouse's signature cannot be obtained because of extenuating circumstances.
- 10          5. If the board receives notification from the internal revenue service that this section  
11          or any portion of this section will cause the public employees retirement system or  
12          the retirement plan established under this chapter to be disqualified for tax  
13          purposes under the Internal Revenue Code, then the portion that will cause the  
14          disqualification 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  
20          defined contribution retirement plan shall pay monthly to the fund an amount equal  
21          to eight and twelve-hundredths percent times the temporary employee's present  
22          monthly salary. The temporary employee shall also pay the required monthly  
23          contribution to the retiree health benefit fund established under section  
24          54-52.1-03.2. This contribution must be recorded as a member contribution  
25          pursuant to section 54-52.1-03.2. An employer may not pay the temporary  
26          employee's contributions. A temporary employee may continue to participate as a  
27          temporary employee until termination of employment or reclassification of the  
28          temporary employee as a permanent employee.
- 29          7. A former participating member who has accepted a retirement distribution pursuant  
30          to section 54-52.6-13 and who subsequently becomes employed by an entity  
31          different from the employer with which the member was employed at the time the

1 member retired but which does participate in any state-sponsored retirement plan  
2 may, before reenrolling in the defined contribution retirement plan, elect to  
3 permanently waive future participation in the defined contribution retirement plan,  
4 whatever plan in which the new employing entity participates, and the retiree health  
5 program and maintain that member's retirement status. Neither the member nor  
6 the employer are required to make any future retirement contributions on behalf of  
7 that employee.

8 **SECTION 9. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **54-52.6-09. Contributions - Penalty.**

- 11 1. ~~Each~~ Except as otherwise provided in this section, each participating member shall  
12 contribute monthly four percent of the monthly salary or wage paid to the  
13 participant, and this assessment must be deducted from the participant's salary in  
14 equal monthly installments commencing with the first month of participation in the  
15 defined contribution retirement plan established under this chapter.
- 16 2. ~~The~~ Except as otherwise provided in this section, the employer shall contribute an  
17 amount equal to four and twelve-hundredths percent of the monthly salary or wage  
18 of a participating member. If the employee's contribution is paid by the employer  
19 under subsection ~~3~~ Z, the employer shall contribute, in addition, an amount equal  
20 to the required employee's contribution. The employer shall pay monthly such  
21 contribution into the participating member's account from its funds appropriated for  
22 payroll and salary or any other funds available for such purposes. If the employer  
23 fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars  
24 and, as interest, one percent of the amount due for each month of delay or fraction  
25 thereof after the payment became due.
- 26 3. Each judge of the supreme or district court shall contribute monthly five percent of  
27 the monthly salary or wage paid to the participant, and this assessment must be  
28 deducted from the participant's salary in equal monthly installments. The state  
29 shall contribute an amount equal to fourteen and fifty-two hundredths percent of  
30 the monthly salary or wage of a participating judge of the supreme or district court.  
31 If the employee's contribution is paid by the employer under subsection 7, the

1           employer shall contribute, in addition, an amount equal to the required employee's  
2           contribution. The employer shall pay monthly such contributions into the  
3           participating member's account from its funds appropriated for payroll and salary or  
4           any other funds available for such purposes. If the employer fails to pay the  
5           contributions monthly, the employer is subject to a civil penalty of fifty dollars and,  
6           as interest, one percent of the amount due for each month of delay or fraction  
7           thereof after the payment became due.

8           4. Each member of the North Dakota highway patrol shall contribute monthly ten and  
9           thirty hundredths percent of the member's monthly salary, which sum must be  
10           deducted from the member's salary in equal monthly installments. The state shall  
11           contribute an amount equal to sixteen and seventy hundredths percent of the  
12           monthly salary or wage of a participating member of the North Dakota highway  
13           patrol. If the employee's contribution is paid by the employer under subsection 7,  
14           the employer shall contribute, in addition, an amount equal to the required  
15           employee's contribution. The employer shall pay monthly such contributions into  
16           the participating member's account from its funds appropriated for payroll and  
17           salary or any other funds available for such purposes. If the employer fails to pay  
18           the contributions monthly, the employer is subject to a civil penalty of fifty dollars  
19           and, as interest, one percent of the amount due for each month of delay or fraction  
20           thereof after the payment became due.

21           5. The employer of a national guard security officer or firefighter shall contribute an  
22           amount determined by the board under section 54-52-06.2. The employer's  
23           contribution must be paid from funds appropriated for salary or from any other  
24           funds available for such purposes. If the security officer's or firefighter's  
25           assessment is paid by the employer under subsection 7, the employer shall  
26           contribute, in addition, an amount equal to the required national guard security  
27           officer's or firefighter's assessment.

28           6. The employer of a peace officer employed by the bureau of criminal investigation  
29           shall contribute an amount determined by the board under section 54-52-06.4. The  
30           employer's contribution must be paid from funds appropriated for salary or from  
31           any other funds available for such purposes. If the peace officer's assessment is

1           paid by the employer under subsection 7, the employer shall contribute, in addition,  
2           an amount equal to the required peace officer's assessment.

3           Z. Each employer, at its option, may pay the employee contributions required by this  
4           section for all compensation earned after December 31, 1999. The amount paid  
5           must be paid by the employer in lieu of contributions by the employee. If the  
6           employer decides not to pay the contributions, the amount that would have been  
7           paid will continue to be deducted from the employee's compensation. If  
8           contributions are paid by the employer, they must be treated as employer  
9           contributions in determining tax treatment under this code and the federal Internal  
10          Revenue Code. Contributions paid by the employer may not be included as gross  
11          income of the employee in determining tax treatment under this code and the  
12          federal Internal Revenue Code until they are distributed or made available. The  
13          employer shall pay these employee contributions from the same source of funds  
14          used in paying compensation to the employee. The employer shall pay these  
15          contributions by effecting an equal cash reduction in the gross salary of the  
16          employee or by an offset against future salary increases or by a combination of a  
17          reduction in gross salary and offset against future salary increases. Employee  
18          contributions paid by the employer must be treated for the purposes of this chapter  
19          in the same manner and to the same extent as employee contributions made  
20          before the date on which employee contributions were assumed by the employer.  
21          An employer shall exercise its option under this subsection by December 1, 1999,  
22          and shall report its choice to the board in writing. The option chosen may not be  
23          revoked for the remainder of the biennium. Thereafter, the option choice must be  
24          forwarded to the board, in writing, by June fifteenth of each odd-numbered year.