

Sixty-third
Legislative Assembly
of North Dakota

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 amend and reenact subsection 4 of section 54-52-01 and sections
2 54-52.6-01, 54-52.6-02, and 54-52.6-15 of the North Dakota Century Code, relating to eligibility
3 to participate in the defined contribution retirement plan; and to repeal section 54-52.6-03 of the
4 North Dakota Century Code, relating to calculation of accumulated fund balances under the
5 public employees retirement system.

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

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

9 4. "Eligible employee" means all permanent employees who meet all of the eligibility
10 requirements set by this chapter and who are eighteen years or more of age, and
11 includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and
12 54-52-02.12, and nonteaching employees of the superintendent of public instruction,
13 including the superintendent of public instruction, who elect to transfer from the
14 teachers' fund for retirement to the public employees retirement system under section
15 54-52-02.13, and employees of the state board for career and technical education who
16 elect to transfer from the teachers' fund for retirement to the public employees
17 retirement system under section 54-52-02.14. Eligible employee does not include
18 ~~nonclassified state employees who elect to become members of the retirement plan~~
19 ~~established under chapter 54-52.6 but does include employees of the judicial branch~~
20 ~~and employees of the board of higher education and state institutions under the~~
21 ~~jurisdiction of the board.~~

22 **SECTION 2. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **54-52.6-01. Definition of terms.**

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

- 3 1. "Board" means the public employees retirement system board.
- 4 2. "Deferred member" means a person who elected to receive deferred vested retirement
5 benefits under chapter 54-52.
- 6 3. "Eligible employee" means a permanent state employee, ~~except an employee of the~~
7 ~~judicial branch or an employee of the board of higher education and state institutions~~
8 ~~under the jurisdiction of the board, who is eighteen years or more of age and who is in~~
9 ~~a position not classified by North Dakota human resource management services. If a~~
10 ~~participating member loses permanent employee status and becomes a temporary~~
11 ~~employee, the member may still participate in the defined contribution retirement plan~~
12 who is hired after July 30, 2013.
- 13 4. "Employee" means any person employed by the state, whose compensation is paid
14 out of state funds, or funds controlled or administered by the state or paid by the
15 federal government through any of its executive or administrative officials.
- 16 5. "Employer" means the state of North Dakota.
- 17 6. "Participating member" means an eligible employee who elects to participate in the
18 defined contribution retirement plan established under this chapter.
- 19 7. "Permanent employee" means a state employee whose services are not limited in
20 duration and who is filling an approved and regularly funded position and is employed
21 twenty hours or more per week and at least five months each year.
- 22 8. "Wages" and "salaries" means earnings in eligible employment under this chapter
23 reported as salary on a federal income tax withholding statement plus any salary
24 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or
25 457. "Salary" does not include fringe benefits such as payments for unused sick leave,
26 personal leave, vacation leave paid in a lump sum, overtime, housing allowances,
27 transportation expenses, early retirement, incentive pay, severance pay, medical
28 insurance, workforce safety and insurance benefits, disability insurance premiums or
29 benefits, or salary received by a member in lieu of previously employer-provided fringe
30 benefits under an agreement between an employee and a participating employer.

1 Bonuses may be considered as salary under this section if reported and annualized
2 pursuant to rules adopted by the board.

3 **SECTION 3. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-52.6-02. 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 reemployed 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 reemployment and ending upon the expiration of six months after the~~
14 ~~date of that reemployment. 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 6 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. At the time of hire the
4 board shall provide an opportunity for an eligible employee to elect to participate in the
5 defined contribution retirement plan under this chapter in lieu of the public employees
6 retirement system under chapter 54-52, pursuant to rules adopted by the board. A new
7 hire may exercise this election anytime from the time of hire until the expiration of thirty
8 days following the completion of a probationary period. If an eligible employee's terms
9 of employment do not provide for a probationary period, that eligible employee has
10 thirty days following the first day of employment within which to exercise this election.
11 An election made by an eligible employee to participate in the defined contribution
12 retirement plan under this chapter is irrevocable. In the case of an eligible employee
13 who makes an election after the date of hire, the election will have the effect of that
14 eligible employee transferring membership from the public employees retirement
15 system under chapter 54-52 to the defined contribution retirement plan under this
16 chapter, and the board shall transfer a lump sum amount from the public employees
17 retirement system fund to the participating member's account in the defined
18 contribution retirement plan under this chapter. However, if the individual terminates
19 employment prior to receiving the lump sum transfer under this section, the election
20 made is ineffective and the individual remains a member of the public employees
21 retirement system under chapter 54-52 and retains all the rights and privileges under
22 that chapter. The board shall calculate the actuarial present value of the individual's
23 accumulated benefit obligation under the public employees retirement system based
24 on the assumption that the individual will retire under the earliest applicable normal
25 retirement age. This section does not affect an individual's right to health benefits or
26 retiree health benefits under chapter 54-52.1.

27 5-2. If the board receives notification from the internal revenue service that this section or
28 any portion of this section will cause the public employees retirement system or the
29 retirement plan established under this chapter to be disqualified for tax purposes
30 under the Internal Revenue Code, then the portion that will cause the disqualification
31 does not apply.

1 ~~6-3.~~ A participating member who becomes a temporary employee may still participate in
2 the defined contribution retirement plan upon filing an election with the board within
3 one hundred eighty days of transferring to temporary employee status. The
4 participating member may not become a member of the defined benefit plan as a
5 temporary employee. The temporary employee electing to participate in the defined
6 contribution retirement plan shall pay monthly to the fund an amount equal to eight
7 and twelve-hundredths percent times the temporary employee's present monthly
8 salary. The amount required to be paid by a temporary employee increases by two
9 percent times the temporary employee's present monthly salary beginning with the
10 monthly reporting period of January 2012, and with an additional increase of two
11 percent, beginning with the reporting period of January 2013. The temporary
12 employee shall also pay the required monthly contribution to the retiree health benefit
13 fund established under section 54-52.1-03.2. This contribution must be recorded as a
14 member contribution pursuant to section 54-52.1-03.2. An employer may not pay the
15 temporary employee's contributions. A temporary employee may continue to
16 participate as a temporary employee until termination of employment or
17 reclassification of the temporary employee as a permanent employee.

18 ~~7-4.~~ A former participating member who has accepted a retirement distribution pursuant to
19 section 54-52.6-13 and who subsequently becomes employed by an entity different
20 from the employer with which the member was employed at the time the member
21 retired but which does participate in any state-sponsored retirement plan may, before
22 reenrolling in the defined contribution retirement plan, elect to permanently waive
23 future participation in the defined contribution retirement plan, whatever plan in which
24 the new employing entity participates, and the retiree health program and maintain
25 that member's retirement status. Neither the member nor the employer are required to
26 make any future retirement contributions on behalf of that employee.

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

29 **54-52.6-15. Board to provide information.**

30 The board shall provide information to new hires and employees who are eligible to elect to
31 become participating members under this chapter. The information must include at a minimum

1 the employee's current account balance, the assumption of investment risk under a defined
2 contribution retirement plan, administrative and investment costs, coordination of benefits
3 information, and a comparison of projected retirement benefits under the public employees
4 retirement system under chapter 54-52 and the retirement plan established under this chapter.
5 Notwithstanding any other provision of law, the board is not liable for any election or investment
6 decision made by an employee based upon information provided to an employee under this
7 chapter.

8 **SECTION 5. REPEAL.** Section 54-52.6-03 of the North Dakota Century Code is repealed.