

**ARTICLE 71-01
GENERAL ADMINISTRATION**

Chapter

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**CHAPTER 71-01-01
ORGANIZATION OF BOARD**

Section

71-01-01-01.	Organization of Public Employees Retirement Board
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Subsection 2 of Section 75-01-01-01 is amended as follows:

71-01-01-01. Organization of public employees retirement board.

1. **History.** The 1965 legislative assembly created the public employees retirement system by legislation codified as North Dakota Century Code chapter 54-52. The starting date of the program was July 1, 1966. The board acts as the administering body to manage the public employees retirement system, the judges retirement system, the highway patrol retirement system, the national guard security officers and firefighters system, the uniform group insurance program, the deferred compensation plan, the prefunded retiree health program, and a pretax benefit program for public employees.
2. **Board membership.** The board consists of ~~nine~~eleven members. ~~Two~~Four are members of the legislative assembly, appointed by the chairman of the legislative management. The majority leader of the house of representatives shall appoint two members of the house of representatives and the majority leader of the senate shall appoint two members of the senate. The members of the legislature shall serve a term of two years, at the pleasure of the appointing majority leader. ~~one member, the chairman, is~~ Four members of the board must be appointed by the governor to serve a term of five years, at the pleasure of the Governor. one member is appointed by the attorney general from the attorney general's staff; one member is the state health officer or state health officer's designee; tThree members are elected by the active membership of the system to serve a term of five years.~~and one member is elected by the retired public employees.~~
3. **Executive director.** The executive director is appointed by the board and is responsible for the administration of the day-to-day activities of the retirement systems, the prefunded retiree health program, the uniform group insurance program, the deferred compensation program, and the pretax benefit program for public employees.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Executive Director
Box 1657
Bismarck, North Dakota 58502

History: Amended Effective November 1, 1981, November 1, 1985; April 1, 1988; September 1, 1989; January 1, 1992; May 1, 2004; April 1, 2016;_____

General Authority: NDCC 28-32-02.1, 54-52-04

Law Implemented: NDCC 28-32-02.1, 54-52-03

CHAPTER 71-01-02 ELECTION RULES

Section

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71-01-02-01. Election Committee.

1. The retirement board must appoint a committee of three, one of whom will be designated as chair, from its membership to oversee elections to the board.
2. Committee members, or their authorized representatives, are responsible for reviewing the election rules for the retirement board membership of the North Dakota public employees retirement system, for counting ballots, and for reporting the election results to the board.
3. Committee members will be appointed at the February meeting of the North Dakota public employees retirement system board to serve until the retirement board meeting for the following February.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Subsection 2 of Section 71-01-02-02 is amended as follows:

71-01-02-02. Eligible voters.

1. All active employees, eligible to serve as elected members of the board in accordance with subsection 4 of North Dakota Century Code section 54-52-03, are eligible to cast one vote for each active member vacancy on the retirement board.
2. ~~All persons receiving retirement benefits are eligible to cast one vote for a retiree member vacancy on the retirement board.~~ Persons participating in the uniform group insurance program, the deferred compensation plan for public employees, or the pretax benefits program but not in the retirement system are ineligible to cast votes in retirement board elections.

History: Effective April 1, 1992; amended effective July 1, 1994; April 1, 2008; April 1, 2012; _____

General Authority: NDCC 54-52-04, 54-52-17(5)

Law Implemented: NDCC 54-52-03

Subsection 1 of Section 71-01-02-03 is amended as follows and Subsection 2 of Section 71-01-02-03 is repealed:

71-01-02-03. Candidate eligibility.

1. Any active participating member, members of the defined contribution retirement plan, the highway patrol retirement system, and the job service retirement plan are eligible to serve as an elected member of the board in accordance with subsection 45 of North Dakota Century Code section 54-52-03, may become a candidate for election to the board. An department/agency or political division may not be represented by more than one elected member. Employees who have terminated their employment for whatever reason are not eligible to serve as an active elected member of the board.
- ~~2. Any person, as of April fifteenth of the election year, who has accepted a retirement allowance, may become a candidate for the retiree member to the board.~~

History: Effective April 1, 1992; amended effective July 1, 1994; July 1, 2000; April 1, 2008; July 1, 2010; April 1, 2012; _____

General Authority: NDCC 54-52-04, 54-52-17(5)

Law Implemented: NDCC 54-52-03

Subsection 1 of Section 71-01-02-04 is amended as follows:

71-01-02-04. Election notification.

1. The director of the North Dakota public employees retirement system shall ensure that notification of an active member vacancy and the election is given to all employees through publication of a notice in the North Dakota public employees retirement system newsletter or any other method of communication as deemed appropriate by the director at least ~~three weeks~~ twenty-one calendar days in advance of a filing date for nomination petitions. ~~The director shall ensure that notification of the vacancy of a retiree member and the election is given to all persons who have accepted a retirement allowance through publication of a notice in the North Dakota public employees retirement system newsletter or any other method of communication as deemed appropriate by the director at least three weeks in advance of a filing date for nomination petitions.~~
2. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of election, and where to obtain the nomination petitions for filing.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008; April 1, 2014; April 1, 2020; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Subsection 1 of Section 71-01-02-05 is amended as follows:

71-01-02-05. Petition format.

- 1 The nomination petition for an active member on the board must include the signatures of at least one hundred active eligible voters. ~~The nomination petition for the retiree member on the board must include the signatures of at least twenty-five persons receiving a retirement allowance.~~
- 2 The nomination petition must include the following statement: "We, the petitioners, who are members of the North Dakota Public Employees Retirement System, nominate _____ for election to the North Dakota Public Employees Retirement System board.
- 3 The nomination petition must include a certification by the candidate, as follows: "I accept the

nomination and if elected will fulfill the responsibilities as a member of the North Dakota Public Employees Retirement System board.

- 4 If there is not room for the required signatures on a single nomination petition, additional petitions may be used. Candidates may reproduce, at their own expense, blank nomination petitions that meet the format requirements without requesting additional petitions from the North Dakota public employees retirement system. All nomination petitions used must be certified and signed by the nominee when submitted to the North Dakota public employees retirement system office.

History: Effective April 1, 1992; amended effective May 1, 2004; April 1, 2008; April 1, 2012;_____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Subsection 5 of Section 71-01-02-06 is amended as follows:

71-01-02-06. Procedure for completing and filing petitions.

1. No period of time, on which an employee is entitled to receive wages or salary from the state of North Dakota or a political subdivision, may be used by the candidates to promote their election except as permitted by the employing agency. In addition, no public funds may be used for the purpose of promoting an election unless permitted by the employing agency.
2. Nomination petitions must be filed with the North Dakota public employees retirement system no later than four p.m. on the date provided in the election notice and must be validated by the election committee or their representatives following the filing deadline and prior to ballots being distributed.
3. Nomination petitions not furnished by the North Dakota public employees retirement system will be accepted provided they are submitted in the prescribed form.
4. A candidate may withdraw that candidate's nomination petition up until one week after the date the nomination petition is filed with the North Dakota public employees retirement system. The notice must be in writing and duly witnessed.
5. Nomination petitions may be accompanied by a three-inch ~~[76.20-millimeter]~~ by five-inch ~~[127.00-millimeter]~~ photograph of the candidate and a narrative not to exceed two hundred words. The absence of a photo or narrative will not invalidate the candidate's eligibility, but only the candidate's name will then appear with the other candidates' information that accompanies the ballots.
6. The retirement board or its representative reserves the right to edit lengthy narratives to the two hundred word limit.
7. The board or its representative shall inform all candidates of the validation of their candidacy.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008; April 1, 2020;_____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-07. Election ballots.

1. Ballots must be prepared by the North Dakota public employees retirement system staff in accordance with the election rules.
2. Ballots must be printed on postcards with return postage supplied and will be mailed to all eligible voters with a narrative on candidates who have provided that information.

3. Ballots must first be arranged with the names of each candidate on the ballot. In printing the ballots, the position of the names must be changed as many times as there are candidates' names on the ballot. The change must be accomplished by taking the name at the head of the ballot and placing it at the bottom and moving the name that was second before the change to the head of the names on the ballot. The same number of ballots must be printed after each change of position so as to result in an equal number of ballots with each candidate's name at the head of the ballot. The ballot must provide a space for write-in candidates.
4. If there is only one candidate for an election, the election will nonetheless be conducted in compliance with the provisions of this chapter
5. If there is no candidate, the board shall solicit at least two persons from the eligible pool of candidates to run for election to the board. The election will then be conducted in compliance with the provisions of this chapter.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Subsection 1 of Section 71-01-02-08 is amended as follows:

71-01-02-08. Election.

1. Ballots must be mailed by first-class United States mail to the address of all eligible active voters for an election of an active board member, ~~or all eligible retired voters for an election of a retired board member,~~ as determined by the North Dakota public employees retirement system's membership roles as of April fifteenth in the year of the election. Each eligible voter gets one ballot. Lost ballots may not be replaced.
2. North Dakota public employees retirement system members who become eligible to vote after April fifteenth, but before the deadline for the receipt of ballots, may be issued a special election ballot by making their request for such ballot in writing to the North Dakota public employees retirement system office no later than the two weeks before the deadline for receipt of ballots.
3. Ballots must be returned to the North Dakota public employees retirement system office no later than four p.m. on the date provided on the election ballots.
4. The candidate receiving the highest number of votes must be considered elected. When there is more than one active member board vacancy to be filled, the candidate with the second highest number of votes must be considered elected. If there are three active member board vacancies to be filled, the person with the third highest number of votes must be considered elected.

History: Effective April 1, 1992; amended effective April 1, 2008; April 1, 2020; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-09. Canvassing rules.

1. Ballot counting by election committee members or their authorized representatives will commence on the date set for the election committee to do so and will continue until complete.
2. Each candidate may have one overseer present at the canvassing who may examine each ballot as to its sufficiency after the canvassers have completed the canvassing of all ballots. No overseer may possess a pen, pencil, or other device which could be considered capable of altering a ballot in any manner.

3. A candidate may act as his or her overseer. If a candidate wishes to designate a representative to act as his or her overseer, that candidate must provide a written authorization, duly witnessed, to the election committee at the canvassing. An overseer may act on behalf of more than one candidate; however, each person must show the required authorization from each candidate represented.
4. The overseer may question the decision of the canvassers regarding a ballot after completion of the canvassing. If questioned, the comments of an overseer will be heard. The canvassers will then vote regarding the acceptability of the ballot with the majority vote ruling.
5. A ballot is not valid where the number of votes on the ballot exceeds the number of vacancies in the election. A ballot that does not, in the opinion of a majority of the canvassers, show a clear indication of the voter's intention, may not be counted.
6. If the percentage of votes received by the candidate receiving the highest number of votes is less than one percent more than the votes received by the candidate receiving the next highest number of votes, the board shall order a recount.
7. Tie votes will be determined by a coin toss. If this procedure is necessary, the election committee will establish and notify the tied candidates of the procedure and location for resolving the tie.
8. If the committee should determine that the outcome of the election has been compromised for any reason, the committee may determine the election to be invalid. If the election is determined to be invalid, the committee shall call for a new election with a new election schedule.

History: Effective April 1, 1992; amended effective April 1, 2008; July 1, 2010; April 1, 2020.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-10. Notification of election results.

1. Election results must be presented to the retirement board following the canvassing of votes. Such report must include an itemization of the number of ballots returned, votes cast for each candidate, votes invalidated, and votes not counted due to late receipt.
2. All candidates will be notified of the election results no later than the business day following the June meeting of the retirement board.
3. Employers and the membership participating in the North Dakota public employees retirement system will be notified of the election results.

History: Effective April 1, 1992; amended effective April 1, 2008; April 1, 2020.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Section 71-01-02-11 is amended as follows:

71-01-02-11. Special elections.

A special election ~~will~~ may be called for by the retirement board in the event of a vacancy resulting from the death, resignation, or termination of North Dakota public employees retirement system membership by any elected board members.

1. Special elections must be conducted in accordance with the regular elections rules, except that the board will determine a new election schedule.

2. In the case of a special election, the term to be filled is the unexpired portion of the vacant board position.

History: Effective April 1, 1992; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-12. Penalties.

A violation of any provision under this chapter may result in one or more of the following penalties, as determined by the board:

1. A candidate's petitions may be declared void.
2. A candidate's nomination may be declared void.
3. A candidate's election may be declared void.
4. Within thirty days of beginning an elected member's term in office, the elected member may be removed.

History: Effective July 1, 2000.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Section 71-01-02-13 is amended as follows:

71-01-02-13. Election voting.

In lieu of sections 71-01-02-07 and 71-01-02-08, and 71-01-02-09 the retirement board may allow for a process by which electronic ballots are submitted to elect an active ~~or retiree~~ candidate to the board.

History: Effective April 1, 2014; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

CHAPTER 71-02-03 SERVICE CREDIT

Section

71-02-03-01	Service Credit – General Rule
71-02-03-01.1	Noneligible Service Credit
71-02-03-01.2	Service Credit Given for Leave Taken
71-02-03-02	Military Credit [Repealed]
71-02-03-02.1	Purchase of Additional Service Credit and Repurchase of Past Service
71-02-03-02.2	Payment
71-02-03-02.3	Delinquent Payment
71-02-03-02.4	Crediting Purchased or Repurchased Service
71-02-03-02.5	Costs
71-02-03-03	Service After Age Sixty-Five [Repealed]
71-02-03-04	Cancellation of Credits
71-02-03-05	Coordination of Multiple Plan Membership
71-02-03-06	Conversion of Sick Leave
71-02-03-07	Employer Purchase of Service Credit or Sick Leave Program
71-02-03-08	Eligible Sick Leave

71-02-03-01. Service credit – General rule.

A member receives credit for each month a contribution is made. Service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for prior service employment as defined in North Dakota Century Code section 54-52-01. For employees employed prior to July 1, 2004, service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for:

1. Probationary employment prior to July 1, 1979, that was previously excluded from eligible employment.
2. Eligible employment between the ages of eighteen and twenty-one that was previously excluded by the age limitation of twenty-one for participation in the retirement program.
3. Summer months for eligible school employees for the period July 1, 1979, to July 1, 1982.
4. Former members of the teachers' fund for retirement, job service North Dakota, or highway patrolmen's retirement systems will be granted credit for previous service in these funds if they received a lump sum refund prior to September 1, 1976.

History: Amended effective September 1, 1982; November 1, 1990; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-01(11)(12)(16), 54-52-17

71-02-03-01.1. Noneligible service credit.

Service credit will not be granted for:

1. Prior service if the member received a refund of contributions after July 1, 1966, unless service has been repurchased in its entirety.
2. Service if the member received a refund of contributions after July 1, 1966, unless it is repurchased or purchased in its entirety or in part as specified by the member.
3. Prior service for any member whose employer joined the retirement system on or after July 1, 1977, unless purchased for the member at the time the employer joined or unless purchased

by the member.

4. Service the member waived when transferring into the defined contribution retirement plan, including service not yet granted pursuant to section 71-02-03-01.

History: Effective November 1, 1990; amended effective April 1, 1992; July 1, 2000.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-05, 54-52-17, 54-52-19.2

71-02-03-01.2. Service credit given for leave taken.

A member may take leave pursuant to policies, rules, and statutes applicable to the member's employing unit. However, service credit may only be given for leave that is part of a participating member's continuous service. Service credit may not be given for isolated leave that is not part of continuous service.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-01(11)(12)(16), 54-52-17

71-02-03-02.1. Military credit.

Repealed effective November 1, 1990.

71-02-03-02.1. Purchase of additional service credit and repurchase of past service.

In order to purchase additional credit or repurchase past service, a member must notify the office, in writing, of the service for which they wish to receive credit. In addition to the written request, the following information must be submitted if applicable:

1. Verification by the former employer of previous North Dakota or out-of-state public service, or service with the federal government.
2. Documentation of military service by submitting a DD214 or NGB22.
3. Certification of approval by the member's employer of any leave of absence and length of that leave.
4. Statement from employee or former employer that service credits being applied for does not qualify for retirement benefits under another retirement system.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.2. Payment.

The total dollar amount for the purchase or repurchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.
2. The installment schedule may extend while the employee is employed by a participating employer but for no longer than a fifteen-year time period.

3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the member to initiate and terminate the payroll deduction.
4. Payments may only be received until the fifteenth of the month following the month of the member's termination date with a participating employer.
5. Payments are due by the fifteenth of the month to be credited for the month.
6. Payments must be greater or equal to fifty dollars per month, large enough to pay the current interest plus a portion of principal, and an amount necessary to complete the payment contract within the fifteen-year time period.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.3. Delinquent payment.

If no payment is received within thirty days of the due date, the public employees retirement system shall send a letter to the member advising them of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on closed accounts must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be reestablished without a new calculation.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.4. Crediting purchased or repurchased service.

Service purchased or repurchased will be credited in the following manner:

1. For each month the system receives a payment toward a purchase contract, the member will earn a proportion of service credit.
2. Member acceptance of a service purchase contract extinguishes all pending service purchase cost estimates, excluding purchase of unused sick leave.
3. Service purchase contracts set up on a payment plan and only partially paid will have the remaining unpaid portion of service credit included when preparing the new service purchase cost calculation
4. For members converting service under the public employees retirement system to service under the judge's retirement system, each month of county judge service under the public employees retirement system will be converted to one month of judicial service credit. The account balance from the public employees retirement system will be transferred to the judges' retirement system account once the contract is paid in full or closed.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004; July 1, 2010; April 1, 2020.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.5. Costs.

If purchasing under North Dakota Century Code section 54-52-02.6 or subdivision d of subsection 1 of North Dakota Century Code section 54-52-17.4, the cost will be the higher of the amount refunded to the member plus interest at the actuarial rate of return or the actuarial cost to provide the credit. All other types of service purchases must be actuarially determined. An actuarial cost must be calculated by applying actuarial factors to the amount of retirement and retiree health insurance credit being purchased by the member. The member's current age, average salary, current credited service, and actuarial factors on record and in effect with the North Dakota public employees retirement system in the month in which the member's written request is processed by the office must be used in the cost calculation. A member's written request must be processed by the office within sixty days of receipt. The amount of retirement and retiree health insurance credit being purchased must be calculated using the benefit formulas in place at the time the written request from the member is processed by the office. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The member's average salary shall be calculated as follows:

1. For members working full time with more than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17.
2. For members working full time with less than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17, but disregarding any month in which the member was paid less than a full-month salary. A full-month salary is the compensation the member and the member's employer agreed the member would be paid for working a full month.
3. For members who have not yet received a full-month salary, the member's average salary shall equal the member's full-month salary, as defined in subsection
4. For members working part time, by using the applicable calculations found in subsections 1 and 2, but using a monthly salary equal to the equivalent of the salary the member would have received if the member was working full time.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the member, and all required documentation, a written cost confirmation must be prepared and mailed to the member. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter unless the contributor terminates employment with a participating employer. If the contributor terminates employment, then the cost stated in the confirmation letter is valid only until the earlier of the end of the ninety-day period or the fifteenth day of the month following the month of termination.

History: Effective July 1, 1994; amended effective June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2018.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-03. Service after age sixty-five.

Repealed as the result of S.L. 1981, ch. 547, § 1.

71-02-03-04. Cancellation of credits.

If a member terminates service and receives a return of the member's accumulated contributions, service credit for the years of such contributions shall be canceled.

History:

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-03-05. Coordination of multiple plan membership.

Upon providing proper documentation of retirement plan participation, a member who meets the following criteria may use service credit in the teachers' insurance retirement fund for the purpose of meeting the normal retirement date for vesting purposes under North Dakota Century Code chapter 54-52. The member:

1. Must have participated in both the teachers' fund for retirement and the teachers' insurance and annuity association of America-college retirement equities fund.
2. Must have elected to transfer the member's teachers' insurance retirement fund account balance to teachers' insurance and annuity association of America-college retirement equities fund in connection with the administrative coordination of the various state retirement plans as provided under chapter 133 of the 1973 North Dakota Session Laws.
3. Did not have a cash out since the time of the transfer of funds.
4. Did not relinquish such service credit in writing.

History: Effective June 1, 1996; amended effective July 1, 1998; April 1, 2020.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-01(11)(12)(16), 54-52-17

Subdivision c of Subsection 1 and Subdivision c of Subsection 3 of Section 71-02-03-06 are amended as follows:

71-02-03-06. Conversion of sick leave.

To convert unused sick leave to service credit, the member must submit an application to the office, no later than the end of the month in which the member is no longer eligible to accrue the sick leave hours, unless otherwise approved by the executive director. The member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member is no longer eligible to accrue sick leave hours. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer. One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The employer and employee contributions rates used to calculate the cost must be the rate of the retirement program of the member at termination.

1. Aftertax payments may be accepted from the member as early as six months prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
 - a. A notice of employment change has been provided to the public employees retirement system.

- b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
 - c. The sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of ~~that the~~ date of calculation. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member by the fifteenth of the month following the month the member is no longer eligible to accrue sick leave hours.
2. The member's record must be updated with the additional service credit once payment is made in full.
3. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
 - a. A notice of employment change has been provided to the public employees retirement system.
 - b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date the member is no longer eligible to accrue sick leave hours, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.
 - c. The sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer and the member's final average salary as of the date ~~the member is no longer eligible to accrue sick leave hours.~~ of calculation. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the date the member is no longer eligible to accrue sick leave hours will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.
 - d. If an underpayment has occurred, then the remaining amount must be collected from the member by the fifteenth of the month following the month the member is no longer eligible to accrue sick leave hours.
 - e. The retiree health credit portion must be paid as a personal aftertax payment.
4. The member's record must be updated with the additional service credit once payment is made in full.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; July 1, 2018; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-27

71-02-03-07. Employer purchase of service credit or sick leave program.

An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees, the employer must create a program and an employer must document

the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the fifteenth day of the month following the month of the employee's termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased or sick leave to be converted, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.
10. The employer agrees to provide information and policies relating to an employer purchase program pursuant to North Dakota Century Code section 54-52-26.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.4, 54-52-29

71-02-03-08. Eligible sick leave.

An employer or a member may only purchase unused sick leave that has not been previously purchased by a former employer or the member.

History: Effective May 1, 2004; amended effective July 1, 2006.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-27

CHAPTER 71-02-05 DISABILITY

Section

71-02-05-01	Eligibility (Repealed)
71-02-05-02	Commencement of Benefit (Repealed)
71-02-05-03	Cancellation of Disability Benefits
71-02-05-04	Calculation of Disability Benefit (Repealed)
71-02-05-05	Conditions for changing to a Disability Retirement Benefit From, an Early Reduced Retirement Benefit
71-02-05-06	Determination of Disability Procedures
71-02-05-07	Optional Benefits
71-02-05-07.1	Judges' Retirement Plan Optional Benefits
71-02-05-08	Transitional Period
71-02-05-09	Interest Accrual on Accumulated Contributions for Disabled Annuitants

71-02-05-01. Eligibility.

Repealed effective January 1, 1992.

71-02-05-02. Commencement of benefit.

Repealed effective January 1, 1992.

Section 71-02-05-03 is repealed:

~~**71-02-05-03. Cancellation of disability benefit.**~~

~~When a member receiving a disability benefit attains the member's normal retirement date, that member may elect to terminate that member's disability benefits and draw retirement benefits as specified in North Dakota Century Code section 54-52-17.~~

~~**History:** Amended effective January 1, 1992; May 1, 2004; July 1, 2006. Repealed effective _____~~

~~**General Authority:** NDCC 54-52-04~~

~~**Law Implemented:** NDCC 54-52-17~~

71-02-05-04. Calculation of disability benefit.

Repealed effective November 1, 1990.

71-02-05-05. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit.

A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. Upon receiving a disability determination, interest accrual shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches the annuitant's normal retirement date. The disability benefit will be calculated, and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

History: Effective September 1, 1982; amended effective November 1, 1990; January 1, 1992; July 1, 1998; July 1, 2006.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-06. Determination of disability - Procedures.

1. Application.

- a. If the member is unable or unwilling to file a public employees retirement system application for disability retirement, the member's legal representative may file the member's disability application.
- b. For the main system and the national guard and law enforcement system, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience. For the judges' retirement plan, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to mentally or physically fulfill the duties and responsibilities of being a judge. A judge who is determined to be disabled pursuant to subdivision a of subsection 3 of North Dakota Century Code section 27-23-03 shall file an application documenting this determination and the effective date of the disability.
- c. The application must be filed with the public employees retirement system and may not be filed earlier than one hundred twenty days before the expected termination date.

2. Medical consultant.

- a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing. Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision h of subsection 3 of North Dakota Century Code section 54-52-17 are eligible for benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further medical information to the medical adviser, but are subject to recertification requirements specified in this chapter. The social security disability award must provide proof that the member's disability was determined during the member's period of eligible employment. In determining eligibility for judges not approved pursuant to the above, the medical director shall work with a review committee composed of one supreme court judge and a district court judge to review the proposed application. In order for the application to be approved, it must have the concurrence of the medical director and at least one judge. The executive director shall appoint two judges to serve on the review committee.

3. Medical examination.

- a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.
- b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports necessary for initial determination of eligibility for benefits.

- c. If determined to be eligible for disability benefits, the member must be reimbursed for the cost of medical examinations specifically requested by the medical adviser and the executive director.

4. Appeal.

- a. If the applicant has terminated employment, the public employees retirement system shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the public employees retirement system shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- b. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.
- c. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the public employees retirement system mailed the decision.
- d. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- e. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.

5. Payment of annuity.

If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment minus any early retirement benefits that have been paid.

6. Redetermination and recertification.

- a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant unless proof of receipt of ongoing social security disability benefits is received. The executive director

may waive the necessity for a recertification, based on the recommendation of the medical consultant or upon proof of receipt of ongoing social security disability benefits.

- b. The public employees retirement system will send a recertification application and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification application has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. If the recertification application is not received within six months of the recertification date set in the recertification request unless an alternative date has been approved by the executive director, the member will no longer be eligible to receive disability benefits. Benefits suspended within six months of the recertification date set in the recertification request will be reinstated the first of the month following recertification by the medical consultant, or upon proof of receipt of ongoing social security disability benefits, unless an alternative date has been approved by the executive director. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first day of the month benefits were suspended, unless otherwise approved by the board.
- c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.
- d. When the member has not provided proof of receipt of ongoing social security disability benefits, the medical consultant will make the recertification decision. The executive director may require additional recertifications, if the facts warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
- e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2016; July 1, 2018.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17, 54-52-26

71-02-05-07. Optional benefits.

For the main system and national guard/law enforcement retirement plans, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during

the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
3. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective January 1, 1992; amended effective July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008; April 1, 2012; April 1, 2016.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06.4, 54-52-17

71-02-05-07.1. Judges' retirement plan optional benefits.

For the judges' retirement plan, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the normal retirement amount. Payment of the normal retirement amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010; April 1, 2012.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-08. Transitional period.

For purposes of providing a transition period during the twelve-month application period provided under previous law, amendments to chapter 71-02-05 dated January 1, 1992, apply to disabled employees who terminated on or after July 1, 1991. However, the previous rules will continue in effect for disabled employees who terminated before July 1, 1991.

History: Effective January 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-09. Interest accrual on accumulated contributions for disabled annuitants.

Effective January 1, 1998, interest must accrue on accumulated contributions as defined in article 71-02 until the disabled annuitant reaches that person's normal retirement age, cancels the benefit in accordance with section 71-02-05-03, the account is closed, or until benefit payments commence to the member's beneficiary.

History: Effective July 1, 1998; amended effective May 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

Section 71-02-05-10 is created as follows:

71-02-05-10. Converting disability retirement benefit to normal unreduced retirement benefit.

A member receiving a disability benefit will be provided a one-time irrevocable election to convert to an unreduced retirement benefit upon meeting normal retirement date, as defined in N.D.C.C. 54-52-17(3), if eligibility is met. A member receiving a disability benefit must begin receiving an unreduced retirement benefit upon meeting normal retirement age. Upon receipt of normal retirement benefits, interest accrual on the member account shall end and benefit option factors will be based upon the actuarial retirement factors on the date of disability to normal conversion.

History: Effective

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

CHAPTER 71-02-08 PARTICIPATION BY GOVERNMENTAL UNITS

Section

71-02-08-01	Participation
71-02-08-02	Withdrawal
71-02-08-03	Transfer of Funds [Repealed]
71-02-08-04	Transfer Date [Repealed]
71-02-08-05	Merger of Eligible Employer Groups

Section 71-02-08-01.1 is repealed.

~~71-02-08-01. Participation.~~

~~Any governmental unit not participating in the retirement system on July 1, 1977, may choose to participate in the retirement system and may elect to purchase past service in accordance with North Dakota Century Code section 54-52-02.1. If the governmental unit elects to purchase past service and prior to the governmental unit's governing authority contracting with the retirement board, the governmental unit must furnish the board with information concerning the permanent employees of the governmental unit. This information should contain, but is not limited to (1) name; (2) social security number; (3) date of birth; (4) date of employment; (5) current monthly salary; and (6) any previous public employment.~~

~~After receipt of this data, the retirement office will calculate the cost to the governmental unit to participate in the retirement plan as offered in North Dakota Century Code section 54-52-17. The governmental unit's governing authority will then decide whether or not to participate in the plan and whether or not to provide service credit for employment prior to the date of participation.~~

~~**History:** Amended effective September 1, 1982; April 1, 2012. Repealed effective _____~~

~~**General Authority:** NDCC 54-52-04~~

~~**Law Implemented:** NDCC 54-52-02.1~~

71-02-08-02. Withdrawal.

Any political subdivision may discontinue participation in the fund if the following requirements are met:

1. The political subdivision must provide the board with a copy of a resolution adopted by the governing authority authorizing the termination of participation in the fund.
2. Upon receiving a copy of the written resolution, an actuarial study must be done by the plan's actuary to determine the accrued benefit of all vested employees minus allocated assets from the date of participation. The interest assumption used must be two hundred basis points less than the plan's interest assumption used for funding purposes. The withdrawal liability must include an administrative expense assessment of five percent.
3. Any costs incurred by the fund, resulting from a political subdivision ceasing participation, including the actuarial fee study and the withdrawal liability, must be assessed against the political subdivision and paid in full before a political subdivision terminates its participation.
4. All employees of a political subdivision that has terminated participation in the fund must not be eligible for future benefit accruals or improvements granted to employees or former employees of participating governmental units after the date the employer's participation ceases.
5. An employee who is not vested at the time an employer ceases participation has the option of

taking a refund or rollover of the employee's contribution plus interest.

History: Effective September 1, 1982; amended effective June 1, 1996; April 1, 2019.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-2.1

71-02-08-03. Transfer of funds.

Repealed effective April 1, 2012.

71-02-08-04. Transfer date.

Repealed effective April 1, 2012.

71-02-08-05. Merger of eligible employer groups.

If a merger between two or more eligible employer groups occurs, the following requirements apply:

1. Written notification must be provided to the office no later than sixty days before the merger is final.
2. When two or more employer groups merge into one, and all do not presently participate in the public employees retirement system, the units merging must decide upon one of the following:
 - a. The participating employer or employers may elect to cease participation as of the date of the merger, subject to payment of any actuarial liabilities accrued. An actuarial study must be conducted at the cost of the exiting employer upon providing the public employees retirement system with written notice of the employer's election to cease participation.
 - b. Subject to executing a revised participation agreement, eligible employees who have not previously participated shall be given the opportunity to participate or waive participation effective the date of the merger. Any person hired in an eligible position after the consolidation date must participate.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 15-10-17, 54-52-02.1

CHAPTER 71-03-03 EMPLOYEE RESPONSIBILITIES

Section

71-03-03-01	Enrollment
71-03-03-02	Late Enrollment
71-03-03-03	Early Enrollment [Repealed]
71-03-03-04	Open Enrollment [Repealed]
71-03-03-05	Special Enrollment for Certain Qualifying Events [Repealed]
71-03-03-06	Continuation of Health, Dental, Vision, or Prescription Drug Coverage After Termination
71-03-03-07	Continuation of Health, Dental, Vision, or Prescription Drug Coverage for Dependents
71-03-03-08	Continuation of Life Insurance After Retirement
71-03-03-09	Leave Without Pay
71-03-03-10	Employee Contribution

Subsection 2 of Section 71-03-03-01 is amended as follows:

71-03-03-01. Enrollment.

An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, unless otherwise noted below, if the employee submits an application for coverage within the first thirty-one days of employment or within the thirty-one days of meeting eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health, dental, vision, or prescription drug insurance plan.
2. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage must enroll for coverage at the time the employee's spouse is enrolled.
3. Addition of a dependent as a result of receiving legal guardianship or receiving a court order to provide health coverage. An employee who previously waived coverage must enroll for coverage at the same time that the employee's eligible dependent is enrolled.
4. Addition of a dependent as a result of birth, adoption, or placement for adoption. Effective date of coverage is the first of the month in which the event occurred. An employee who previously waived coverage shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

History: Effective October 1, 1986; amended effective July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2010; April 1, 2012; April 1, 2016; April 1, 2022. _____

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03

71-03-03-02. Late enrollment.

An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective October 1, 1986; amended effective June 1, 1996; July 1, 1998; May 1, 2004; April 1, 2016.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03, 42 U.S.C. 300gg-3

71-03-03-03. Early enrollment.

Repealed effective June 1, 1996.

71-03-03-04. Open enrollment.

Repealed effective June 1, 1996.

71-03-03-05. Special enrollment for certain qualifying events.

An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America - college retirement equities fund, or retirees who have accepted a retirement allowance from a participating political subdivision's retirement plan and provide verification of distribution are eligible for coverage with the health, dental, vision, or prescription drug insurance program.

1. The employee, retiree, or surviving spouse must submit application for coverage within thirty-one days from one of the following qualifying events:
 - a. The month in which the eligible employee or retiree turns age sixty-five or becomes eligible for Medicare.
 - b. The month in which the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for Medicare.
 - c. The month in which the eligible employee terminates employment.
 - d. The month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems outlined above.
 - e. The month in which an eligible employee or retiree who is covered through a spouse's plan becomes ineligible for the spouse's plan due to divorce, death, loss of employment, reduction in hours or other events which may cause loss of coverage as determined by the board.
 - f. The month in which the eligible employee or retiree is no longer eligible for employer-sponsored insurance, including coverage provided under the Consolidated Omnibus Budget Reconciliation Act.
2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred or under subdivision a or b of subsection 1 may become effective the month in which eligibility for Medicare occurs. If an application is not submitted within thirty-one days of a qualifying event, the eligible individual must be considered to have waived coverage and may not be enrolled unless the individual meets the criteria of another qualifying event. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.
3. Other individuals eligible for the health, dental, vision, or prescription drug insurance plan include a surviving spouse who is not receiving a qualified monthly retirement benefit from one of the eligible retirement systems outlined above, but who was a covered dependent on the eligible retiree's health, dental, vision, or prescription drug insurance plan at the time of the eligible retiree's death if there is no lapse in coverage.
4. Individuals not eligible for the health, dental, vision, or prescription drug insurance plan include:
 - a. A former employee who received a refund of the employee's retirement account, including

individuals in the defined contribution plan who take a cash withdrawal of the employee's account, roll their account into another qualified plan, or use the moneys in their account to purchase an annuity.

- b. A nonspouse beneficiary (eligible for Consolidated Omnibus Budget Reconciliation Act).
- c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
- d. A formerly deferred retiree who received a refund of the retiree's retirement account.
- e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
- f. A surviving spouse of a former employee who received a refund of the employee's retirement account.
- g. A former participating member of the defined contribution retirement program who would not qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that employee was a member of the defined benefit retirement plan, unless eligible under the Consolidated Omnibus Budget Reconciliation Act, and then only for the required duration of eligibility under the Act.
- h. For the purposes of the medical and prescription drug plan, employees who first retire after July 1, 2015, and are not eligible for Medicare upon their retirement and completion of any period of eligibility under the Consolidated Omnibus Budget Reconciliation Act, until such time as they or their spouse become eligible for Medicare.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; April 1, 2012; April 1, 2016; July 1, 2018.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1; Pub. L. 99-272; 100 Stat. 222; 26 USC 162 et seq.

71-03-03-06. Continuation of health, dental, vision, or prescription drug coverage after termination.

An employee who terminates employment and is not receiving a monthly retirement benefit from one of the eligible retirement systems, and applies for continued coverage with the health, dental, vision, or prescription drug plan may continue such coverage for a maximum of eighteen months by remitting timely payments to the board. The employee desiring coverage shall notify the board within sixty days of the termination. Coverage will become effective on the first day of the month following the last day of coverage by the employing agency if an application is submitted within sixty days. An individual who fails to timely notify the board is not eligible for coverage.

History: Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; April 1, 2012.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02; Pub. L. 99-272; 100 Stat. 222; 26 USC 162 et seq.

71-03-03-07. Continuation of health, dental, vision, or prescription drug coverage for dependents.

Dependents of employees with family coverage may continue coverage with the group after their eligibility would ordinarily cease. This provision includes divorced or widowed spouses and children

when they are no longer dependent on the employee. Coverage is contingent on the prompt payment of the premium, and in no case will coverage continue for more than thirty-six months. Dependents desiring coverage shall notify the board within sixty days of the qualifying event and must submit an application in a timely manner. An individual who fails to notify the board within the sixty days, and who desires subsequent coverage, will not be eligible for coverage.

History: Effective October 1, 1986; amended effective November 1, 1990; April 1, 2012.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02; Pub. L. 99-272; 100 Stat. 232; 42 USC 300 et seq.

Section 71-03-03-08 is amended as follows:

71-03-03-08. Continuation of life insurance after retirement.

An employee who is enrolled in the group life insurance program may continue the basic and supplemental life insurance coverage upon retirement or disability only if: 1) the employee is entitled to receives a retirement allowance from an eligible retirement system; and 2) by making application applying for life insurance coverage and remitting timely payments to the board. Life Insurance Coverage must be continuous from when active group life insurance ends and retired employee life insurance benefits coverage begins. Supplemental life insurance coverage can only be continued until age sixty-five.

History: Effective October 1, 1986; amended effective June 1, 1996; May 1, 2004; April 1, 2014;_____

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-09. Leave without pay.

An employee on an approved leave without pay may elect to continue coverage for the periods specified in the plans for life insurance, health, dental, vision, or prescription drug coverages by paying the full premium to the agency. An eligible employee electing not to continue coverage during a leave of absence is entitled to renew coverage for the first of the month following the month that the employee has returned to work if the employee submits an application for coverage within the first thirty-one days of returning to work. An eligible employee failing to submit an application for coverage within the first thirty-one days of returning to work or eligibility for a special enrollment period, may enroll during the annual open enrollment. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; September 1, 1997; July 1, 1998; May 1, 2004; April 1, 2012; April 1, 2022.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03

Section 71-03-03-10 is amended as follows:

71-03-03-10. Employee contribution.

An employee who selects a level of coverage which requires an additional amount of premium shall pay the amount due to the employing agency ~~in advance~~. The employee contribution may be paid via payroll deduction or any other means acceptable to the agency.

History: Effective October 1, 1986._____

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

CHAPTER 71-03-05 BOARD RESPONSIBILITIES

Section

71-03-05-01	Premium Billing
71-03-05-02	Retiree Billing
71-03-05-03	Late Premium for Retirees [Repealed]
71-03-05-04	Late Premium for Terminated Employee [Repealed]
71-03-05-05	Appeal Process
71-03-05-06	Recovery of Benefit Payments
71-03-05-07	Erroneous Payment of Premiums – Overpayments
71-03-05-08	Erroneous Payment of Premiums – Underpayments
71-03-05-09	Erroneous Payment of Premiums – Appeals
71-03-05-10	Determining Amount of Premium Overpayments and Underpayments
71-03-05-11	Failure to Provide Notification and Errors

Section 71-03-05-01 is amended as follows:

71-03-05-01. Premium billing.

The board will maintain a monthly billing, and reconcile the moneys, for all agencies, individual retirees, employers, and other eligible individuals provided in N.D.C.C. 54-52.1 ~~terminated employees with continued coverage.~~

~~The board will reconcile the moneys received from each agency, retiree, and terminated employee to the billing.~~

History: Effective October 1, 1986. _____

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-02. Retiree billing.

Retirees receiving a monthly retirement benefit from the board in a sufficient amount to pay premium will have the total monthly premium deducted from their benefit check.

History: Effective October 1, 1986; amended effective November 1, 1990; April 1, 2008; July 1, 2018.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-05-03. Late premium for retirees.

Repealed effective April 1, 2008.

71-03-05-04. Late premium for terminated employees.

Repealed effective April 1, 2012.

71-03-05-05. Appeal process.

If a member's benefits have been denied in whole or in part by the board or its agent, the member will be notified in writing of the denial and the reasons. Within sixty days of the date shown on the denial notice, the member may file a petition for review. The petition must be in writing, the reasons stated for disputing the denial and be accompanied by any documentation. Should the member filing a petition for review, or should the board or its agent desire information which cannot be presented satisfactorily by correspondence, the board or its designated appeals committee may schedule a hearing. The member filing the appeal will be notified in writing at least fifteen days prior to hearing of the time, date, and place.

The board or its agent will render a decision as soon as possible, but not later than one hundred twenty days after the receipt of the petition for review. The decision will be in writing.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 2010; April 1, 2012.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-06. Recovery of benefit payments.

Whenever benefits are paid in noncompliance with the contract, the board retains the right to recover the payments from the party responsible. In case the claims payor is at fault, the amount of overpayment will be withheld from the administrative fees paid by the board. In case overpayments are made because of false or misleading information provided by a member, the claims payor shall attempt to recover the amount. Any moneys recovered shall be credited to the board. In case an overpayment is made because of a mistake or deliberate act by a health care provider, the claims payor shall collect the money from the provider and credit that amount to the board. In cases of suspected fraud, the board may turn the evidence over to the state's attorney or attorney general's office for possible prosecution.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-07. Erroneous payment of premiums - Overpayments.

1. An "overpayment" means a payment of money to the public employees retirement system for group insurance premiums that exceeds the premiums due for the level of coverage that should have been in effect.
2. If an overpayment occurs, the amount of the overpayment must be paid to the insured in a lump sum within thirty days of the discovery of the error. The payment may be made to any person insured under the policy.

History: Effective April 1, 2002; amended effective April 1, 2016.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-08. Erroneous payment of premiums - Underpayments.

1. An "underpayment" means a payment of money to the public employees retirement system for group insurance premiums that is less than the premiums due for the level of coverage that should have been in effect. Underpayment of premium is solely an error in the amount of premium billed to the individual.
2. An individual who underpays premiums is liable to pay those premiums upon receiving a request for repayment and an explanation of the amount due from the executive director. All underpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the underpayment is estimated to exceed the amount of the underpayment, the underpayment is considered to be unrecoverable.
3. If an underpayment is discovered in the first month it occurs, the individual must pay the amount due in a lump sum within thirty days of the discovery of the error.
4. If an underpayment is not discovered within the first month it occurs, the following will apply:

- a. If not the result of any wrongdoing, negligence, misrepresentation, or omission by the individual, then the individual must make arrangements within sixty days of receiving written notification to either pay by lump sum or installments. The installment payment schedule is subject to approval by the executive director with the minimum repayment amount no less than fifty dollars a month. If repayment arrangements are not in place within sixty days of the date of the written request for repayment, the executive director shall authorize payment to be made in three equal installments, using the same payment method the individual has authorized for paying current monthly premiums.
 - b. If underpayment is the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the individual, underpayments must be made in full within sixty days of written notification.
5. If an underpayment occurs and the individual no longer participates in the group insurance, any premium amounts due are immediately payable.
6. If the individual dies prior to paying in full, then the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.
7. If the individual refuses to repay the underpayment, or the underpayment is not paid in full, coverage may be canceled retroactive to the first day of the month following the month for which full premium payment was received.

History: Effective April 1, 2002; amended effective April 1, 2008; July 1, 2010; April 1, 2016.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-09. Erroneous payment of premiums - Appeals.

1. A person not satisfied with the repayment arrangements made under this policy may appeal the executive director's decision in writing to the board. The written request must explain the basis of the appeal and must be received in the office within sixty days of the executive director's written decision.
2. The board may release a person from liability to repay an underpayment, in whole or in part, if it determines:
 - a. The underpayment is not the fault of the recipient; or
 - b. It would be contrary to equity and good conscience to collect the underpayment.

History: Effective April 1, 2002.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-10. Determining amount of premium overpayments and underpayments.

1. The amount of the health premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or July of the earliest contract period still open, whichever is more recent.
2. The amount of the life premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.

3. The amount of the dental premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.
4. The amount of the vision premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.

History: Effective April 1, 2002; amended effective April 1, 2008; April 1, 2014.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-11. Failure to provide notification and errors.

1. If the individual fails to notify the public employees retirement system of a change that affects the level of coverage in force, upon learning of the change, the guidelines for premium overpayment or underpayment will apply.
2. If an individual fails to notify the public employees retirement system to establish coverage, the guidelines for premium overpayment or underpayment will not apply. Coverage will only be established prospectively.
3. If the public employees retirement system makes an error that affects the level of coverage in force for the individual, upon learning of the error, the guidelines for premium overpayment or underpayment will apply.
4. If the public employees retirement system makes an error and does not establish coverage for an individual, upon learning of the error, the guidelines for premium underpayment will apply.
5. If an individual does not receive timely notification of COBRA continuation rights, premiums must be paid in full before continuation coverage is established retroactively.

History: Effective April 1, 2002.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

CHAPTER 71-03-06

PARTICIPATION OF POLITICAL SUBDIVISIONS EMPLOYEE RESPONSIBILITIES

Section

71-03-06-01	Enrollment
71-03-06-02	Late Enrollment
71-03-06-03	Special Enrollment for Certain Qualifying Events
71-03-06-04	Continuation of Hospital and Medical Coverages After Termination
71-03-06-05	Continuation of Health Benefits for Dependents
71-03-06-06	Continuation of Life Insurance After Retirement
71-03-06-07	Leave Without Pay
71-03-06-08	Employee Contribution

Section 71-03-06-01 and Subsection 3 and Subsection 4 are amended as follows:

71-03-06-01. Enrollment.

An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, unless otherwise noted below, if the employee submits an application for coverage within the first thirty-one days of employment, or within the thirty-one days of meeting eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health insurance plan.
2. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage must enroll for coverage at the time the employee's spouse is enrolled.
3. Addition of a dependent as a result of ~~birth, adoption, placement for adoption~~, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage must enroll for coverage at the same time that the employee's eligible dependent is enrolled.
4. Addition of a dependent as a result of birth, adoption, or placement for adoption. Effective date of coverage is the first of the month in which the event occurred. An employee who previously waived coverage shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

History: Effective June 1, 1996; amended effective July 1, 1998; July 1, 2010; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52.1-03.1, 54-52.1-03.4

71-03-06-02. Late enrollment.

Political subdivisions must follow the same late enrollment procedures as outlined in section 71-03-03-02.

History: Effective June 1, 1996; amended effective July 1, 1998; May 1, 2004; July 1, 2010.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-03. Special enrollment for certain qualifying events.

Political subdivisions must follow the same enrollment procedures as outlined in section 71-03-03-05.

History: Effective June 1, 1996; amended effective July 1, 2010.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-04. Continuation of hospital and medical coverages after termination.

Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-06.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-05. Continuation of health benefits for dependents.

Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-07.

History: Effective June 1, 1996; amended effective July 1, 2010.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-06. Continuation of life insurance after retirement.

Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-08.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-07. Leave without pay.

Political subdivisions must follow the same leave without pay procedures as outlined in section 71-03-03-09.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

Section 71-03-06-08 is amended as follows:

71-03-06-08. Employee contribution.

An employee who is enrolled in the group insurance plan and required by the ~~employing agency~~ employer to pay a part of the premium must pay the amount due to the ~~employing agency in advance of the employer's payment to the public employees retirement system~~ employer. The employee contribution may be paid via payroll deduction or any other means acceptable to the employer.

History: Effective June 1, 1996; amended effective July 1, 2010; _____

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-02, 54-52.1-03.1

ARTICLE 71-04
DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES

Chapter

71-04-01	Definitions
71-04-02	Plan Design
71-04-03	Employee Responsibilities
71-04-04	Retirement Board Responsibilities
71-04-05	Employer Responsibilities
71-04-06	Provider Responsibilities
71-04-07	Benefits [Repealed]
71-04-08	Qualified Domestic Relations Orders
71-04-09	Uniform Services Employment and Retirement Rights Act

Chapter 71-04-01
Definitions

Section

71-04-01-01	Definitions
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Subsection 10 of Section 71-04-01-01 is amended as follows:

71-04-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant to receive benefits under the plan in the event the participant dies.
2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.
3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.
4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).
5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.
6. "Participant" is any employee of a participating employer who executes a participant agreement.
7. "Participant agreement" means an agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the deferral and participation in the plan.
8. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.
9. "Retirement" means separation from service with the employer on a date coincidental with the normal, postponed, early, or disability retirement dates as described in North Dakota Century Code chapter 54-52-17.3.

10. Retirement board" or "board" means the ~~nine~~ eleven persons described in North Dakota Century Code chapter 54-52-03.
11. Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.
12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.
13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

Subsection 14 of Section 71-04-01-01 is created as follows:

14. Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported pursuant to rules adopted by the board.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010; April 1, 2016; April 1, 2020; _____

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2, 54-52.2-04

CHAPTER 71-04-03 EMPLOYEE RESPONSIBILITIES

Section	
71-04-03-01	Enrollment
71-04-03-02	Effective Date of Deferrals
71-04-03-03	Change in Monthly Deferral
71-04-03-04	Change in Beneficiary
71-03-04-05	Unforeseeable Emergency
71-04-03-06	Termination of Participation
71-04-03-07	Distribution of Assets

Section 71-04-03-01 is amended as follows:

71-04-03-01. Enrollment.

Public employees may enroll, with up to three providers, in the deferred compensation plan by completing and submitting a participant agreement to the office or the board's designated vendor.

History: Effective April 1, 1989; amended effective April 1, 2014; April 1, 2016; _____

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03

71-04-03-02. Effective date of deferrals.

All deferrals are effective the payroll period ending in the month following the month in which the deferral is authorized. Deferrals cannot be requested or authorized for the month in which income is being earned.

History: Effective April 1, 1989; amended effective July 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03; IRC 457(b)(4)

Section 71-04-03-03 is amended as follows:

71-04-03-03. Change in monthly deferral.

A participant may change the amount of deferral at any time, as long as a participant agreement is completed and submitted to the office or the board's designated vendor as set forth in section 71-04-03-01.

History: Effective April 1, 1989; amended effective April 1, 2016; _____

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03; IRC 457(b)(4)

71-04-03-04. Change in beneficiary.

The participant may change the primary or contingent beneficiary at any time by contacting the participant's designated provider representative.

History: Effective April 1, 1989; amended effective May 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-03-05. Unforeseeable emergency.

A participant who, prior to separation from service, experiences an unforeseeable emergency as defined in section 71-04-01-01 may apply for a distribution of the participant's deferred compensation in account to the extent reasonably needed to satisfy the financial need. The participant may make application by completing a financial hardship form and delivering it to the retirement board offices.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; July 1, 2010

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-03-06. Termination of participation.

Participation in the plan may be terminated at any time by completion of a participant agreement indicating a suspension of monthly deferrals.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-03-07. Distribution of assets.

Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05 or 71-04-08-01, or as a direct trustee-to-trustee plan transfer to a tax-qualified governmental defined benefit plan (as defined in Internal Revenue Code section 414(d)) for the purchase of permissive service credit (as defined in Internal Revenue Code section 415(n)(3)(A) or a repayment to which Internal Revenue Code section 415 does not apply by reason of section 415(k)(3), regardless of whether or not the participant has had a severance from employment, at a time and in a manner prescribed by the board, as set forth in the 457 deferred compensation plan document, and in a manner consistent with section 457(e)(17) of the Internal Revenue Code.

History: Effective May 1, 2004; amended effective April 1, 2016.

General Authority: NDCC 28-32-02, 54-52-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

CHAPTER 71-05-02 DISABILITY

Section

71-05-02.01	Disability Retirement Eligibility
71-05-02-01.1	Conditions for Changing to a Disability Retirement Benefit From an Early Reduced Retirement Benefit
71-05-02-02	Determination of Disability – Procedures
71-05-02-03	Aggrieved Parties' rights [Repealed]
71-05-02-04	Optional Benefits
71-05-02-05	Interest Accrued on Accumulated Contributions for Disabled Annuitants
71-05-02-06	Cancellation of Disability Benefit

71-05-02-01. Disability retirement eligibility.

A member of the highway patrol retirement system, who has completed at least one hundred eighty days of employment, is eligible for disability retirement benefits if the member became permanently and totally disabled during the period of covered employment and otherwise complies with section 71-05-02-02. A member eligible for normal retirement date shall receive the normal retirement benefit if it exceeds the disability retirement benefit.

History: Effective November 1, 1990; amended effective July 1, 2006.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

71-05-02-01.1. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit.

A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. During this period, the member's account will be handled in the same manner as all early reduced retirement benefits. Upon receiving a disability determination, interest accrual on the member's account shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches the annuitant's normal retirement date. The disability benefit will be calculated and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

History: Effective May 1, 2004; amended effective July 1, 2006.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

71-05-02-02. Determination of disability - Procedures.

1. Application.

- a. Application for disability benefits must be made within one year from the last date of covered employment on the form provided by the plan administrator.
- b. If the member is unable or unwilling to file an application, the member's employer or legal representative may file the member's disability application.
- c. The application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience.

2. Medical examination.

- a. The applicant for disability retirement must provide the plan administrator with medical examination reports.
- b. An initial medical examination should be completed by the member's attending or family physician on the medical examination form provided by the plan administrator. If deemed necessary by the board's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination report if deemed acceptable by the medical consultant.
- c. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports.

3. Medical consultant.

- a. The board will retain a medical doctor to act as its consultant on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant will be responsible to advise the plan administrator of the medical diagnosis and whether the condition is a permanent and total disability.

4. Decision and appeal.

- a. The plan administrator shall consider applications for disability benefits and shall make a written decision whether an applicant is entitled to benefits. The decision must be mailed to the applicant's address of record.
- b. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the plan administrator mailed the decision.
- c. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- d. If the applicant has terminated employment, the plan administrator shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the plan administrator shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- e. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.

- f. If the initial board decision is adverse to the applicant, after exhausting the administrative procedure under subdivisions b and c, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.
5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment, minus any early retirement benefits that have been paid.
6. **Redetermination and recertification.**
 - a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The plan administrator may waive the necessity for a recertification based on the recommendation of the medical consultant.
 - b. The plan administrator will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first of the month that benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.
 - c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the plan administrator.
 - d. The medical consultant will make the recertification decision. The executive director may require additional recertifications. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
 - e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The plan administrator shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to the date of suspension if the annuitant is subsequently found to meet recertification requirements.
 - f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective November 1, 1990; amended effective June 1, 1992; June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

71-05-02-03. Aggrieved parties' rights.

Repealed effective June 1, 1996.

71-05-02-04. Optional benefits.

An individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary supplies a marriage certificate and death certificate and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member or, in the event of divorce, the member's benefit must be returned to the normal retirement amount. Payment of the normal retirement amount must commence on the first day of the month following the spouse's death if written notification of death, provided a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
2. **Twenty-year or ten-year certain option.** A member may receive the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective July 1, 1998; amended effective May 1, 2004; July 1, 2006; April 1, 2008; April 1, 2012.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11.4(d)

71-05-02-05. Interest accrued on accumulated contributions for disabled annuitants.

Effective January 1, 1998, interest shall accrue on accumulated contributions as defined in article 71-01 until the disabled annuitant reaches normal retirement age, cancels the benefit in accordance with section 71-05-02-06, the account is closed, or until benefit payments commence to the member's beneficiary.

History: Effective July 1, 1998; amended effective July 1, 2010.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11.4(d)

Section 71-05-02-06 is amended as follows:

71-05-02-06. Cancellation of disability benefit.

When a member receiving a disability benefit attains the member's normal retirement date, that member may elect to terminate that member's disability benefit and draw retirement benefits as specified in North Dakota Century Code section 39-03.1-11. Upon receipt of normal retirement benefits, interest

accrual on the member account shall end and benefit option factors will be based upon the actuarial retirement factors on the date of disability to normal conversion.

History: Effective May 1, 2004; amended effective July 1, 2006;_____

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

CHAPTER 71-05-04 SERVICE CREDIT

Section

71-05-04-01	Service Credit – General Rule
71-05-04-02	Military Credit
71-05-04-03	Repurchase of Service Credit and Purchase of additional Service Credit
71-05-04-03.1	Purchase of Additional Years of Service [Repealed]
71-05-04-04	Payment
71-05-04-04.1	Costs
71-05-04-05	Delinquent Payment
71-05-04-06	Crediting Purchased or Repurchased Service
71-05-04-07	Cancellation of Credits
71-05-04-08	Conversion of Sick Leave
71-05-04-09	Employer Purchase of Service Credit or Sick Leave Program

71-05-04-01. Service credit - General rule.

A member receives credit for each month a contribution is made.

History: Effective October 1, 1991; amended effective July 1, 1998.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-04-02. Military credit.

Eligible service credit may be granted as it pertains to the North Dakota highway patrol retirement system as established in chapter 71-02-11.

History: Effective October 1, 1991.

General Authority: NDCC 39-03.1-06

Law Implemented: 38 USC 2021-2026

71-05-04-03. Repurchase of service credit and purchase of additional service credit.

To purchase additional credit or repurchase past service, a contributor must notify the public employees retirement system, in writing, of the service for which the person wishes to receive credit. In addition to the written request, the following information must be submitted, if applicable:

1. Documentation of military service by submitting a DD214 or NGB22.
2. Certification of approval by the member's employer of any leave of absence and length of that leave.

History: Effective October 1, 1991; amended effective June 1, 1996; April 1, 2002; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-03.1. Purchase of additional years of service.

Repealed effective May 1, 2004.

71-05-04-04. Payment.

The total dollar amount for repurchase or purchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established

under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.
2. The installment schedule may extend while the member is employed by the participating employer but for no longer than a fifteen-year time period.
3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the contributor to initiate and terminate the payroll deduction.
4. Payments are due by the fifteenth of the month to be credited for the month.
5. Payments may only be received from a contributor until the fifteenth of the month following the month of the member's termination date with a participating employer.
6. Payments must be greater or equal to fifty dollars per month, large enough to pay the current interest plus a portion of the principal and an amount necessary to complete the payment contract within the fifteen-year time period.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 39-03.1-06, 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-04.1. Costs.

The cost to repurchase service credit must be calculated by applying actuarial factors to the amount of the retirement and retiree health insurance credit being purchased by the contributor or member of an alternative retirement system. The contributor's current age, average salary as calculated under subsection 2 of North Dakota Century Code section 39-03.1-11, and current credited service on record with the North Dakota public employees retirement system in the month in which the contributor's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit benefits being purchased must be calculated using the benefit formulas in place at the time the written request is received from the contributor. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the contributor, a written cost confirmation must be prepared and mailed to the individual. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter unless the contributor terminates employment with the employer. If the contributor terminates employment, then the cost stated in the confirmation letter is valid only until the earlier of the end of the ninety-day period or the fifteenth day of the month following the month of termination.

History: Effective June 1, 1996; amended effective May 1, 2004; July 1, 2006.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-05. Delinquent payment.

If a payment to be made pursuant to section 71-05-04-04 is not received within thirty days of the due

date, the public employees retirement system shall send a letter to the contributor or member of an alternative retirement system advising the person of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on a closed account must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be reestablished without a new calculation.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-06. Crediting purchased or repurchased service.

For each month the system receives a payment toward a purchase contract, the member will earn a proportion of service credit.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; July 1, 2010.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-07. Cancellation of credits.

If a member terminates service and receives a return of the member's accumulated contributions, service credit for the years of such contributions must be canceled.

History: Effective October 1, 1991.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-10.1, 39-03.1-14.1

Subdivision c of Subsection 1 is amended as follows:

71-05-04-08. Conversion of sick leave.

To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer.

One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The cost to convert unused sick leave into service credit must be paid with after tax employee contributions.

1. Aftertax payments may be accepted from the member as early as six months prior to termination if the following requirements are met:
 - a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
 - b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.

- c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave, confirmed by the member's employer, and the member's final average salary as of ~~that~~ the date of calculation.
- d. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member by the fifteenth of the month following the month of the member's date of termination.
- e. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

Subdivision c of Subsection 2 is amended as follows:

- 2. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to termination if the following requirements are met:
 - a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
 - b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date of termination, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.
 - c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of ~~that~~ the date of calculation. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the termination date will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.
 - d. If an underpayment has occurred, then the remaining amount must be collected from the member by the fifteenth of the month following the month of the member's date of termination.
 - e. The retiree health credit portion must be paid as a personal aftertax payment.
- 3. The member's record must be updated with the additional service credit once payment is made and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; _____

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-30

71-05-04-09. Employer purchase of service credit or sick leave program.

An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees the employer must create a program and document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system. The employer also agrees that all purchases will be completed no later than the fifteenth day of the month following the month of the employee's termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.
10. The employer agrees to provide information and policies pertaining to the employer purchase program pursuant to North Dakota Century Code section 39-03.1-28.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-10.2

ARTICLE 71-08 DEFINED CONTRIBUTION RETIREMENT PLAN

Chapter

71-08-01	Election and Transfer
71-08-02	Membership in Defined Contribution Retirement Plan
71-08-03	Disability
71-08-04	Qualified Domestic Relations Order
71-08-05	Review Procedure
71-08-06	Uniformed Services Employment and Reemployment Rights Act
71-08-07	Additional Contributions
71-08-08	Temporary Employee Participation
71-08-09	Return to Service – Retired Member
<u>71-08-10</u>	<u>Permanent Employee Participation</u>
<u>71-08-11</u>	<u>Contributions</u>

CHAPTER 71-08-01 ELECTION AND TRANSFER

Section

71-08-01-01	Ability to Elect to Transfer Into the Defined Contribution Retirement Plan
71-08-01-02	Vesting in Transferred Accumulated Fund Balance
71-08-01-03	Spousal Signature Requirements
71-08-01-04	Transfer of Members With Qualified Domestic Relations Order on Their Accounts
71-08-01-05	Transfer Amount of Persons Transferring Into Eligible Employment After December 31, 1999
71-08-01-06	Public Employees Retirement System Retirees Not Eligible to Transfer Upon Return to work
71-08-01-07	Late Election Opportunity
71-08-01-08	Transfer of Funds

Section 71-08-01-01 is repealed.

~~71-08-01-01. Ability to elect to transfer into the defined contribution retirement plan.~~

~~Once a member of the public employees retirement system under North Dakota Century Code chapter 54-52 has declined or failed to elect to transfer into the defined contribution retirement plan, that member may not later elect to transfer unless one of the following applies:~~

- ~~1. The member is appointed or elected to a new office that is eligible for the defined contribution retirement plan.~~
- ~~2. The member leaves eligible employment and later reacquires eligible employment.~~

History: Effective July 1, 2000. Repealed effective _____

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02

71-08-01-02. Vesting in transferred accumulated fund balance.

Vesting in that portion of the accumulated fund balance attributable to the employer's contribution which is transferred from the defined benefit public employees retirement system pursuant to North Dakota Century Code section 54-52.6-03 will follow the same schedule provided in North Dakota Century Code section 54-52.6-10.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-03, 54-52.6-10

71-08-01-03. Spousal signature requirements.

For purposes of the spousal signature requirements of subsection 4 of North Dakota Century Code section 54-52.6-02 and North Dakota Century Code section 54-52.6-11, extenuating circumstances alleviating the requirement of a spouse's signature are only present if the board determines the spouse is unavailable for the entire election period or the member has a power of attorney over the spouse which would legally allow the member to sign for the spouse.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02(4), 54-52.6-11

71-08-01-04. Transfer of members with qualified domestic relations orders on their accounts.

Members of the public employees retirement system under North Dakota Century Code chapter 54-52 who have a valid qualified domestic relations order on their account may only transfer to the defined contribution retirement plan if they obtain a new qualified domestic relations order from the applicable court. The account shall not be transferred unless both the participating member and the member's ex-spouse agree to transfer to the defined contribution retirement plan.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-12

Section 71-08-01-05 is amended as follows:

71-08-01-05. Transfer amount of persons transferring into eligible employment after December 31, 1999.

The amount the board shall transfer for persons beginning or transferring to eligible employment after December 31, 1999 and before January 1, 2025, shall equal the actual employer and employee contributions plus interest, as provided in subsection 2 of North Dakota Century Code section 54-52.6-03.

History: Effective July 1, 2000; _____

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-03

71-08-01-06. Public employees retirement system retirees not eligible to transfer upon return to work.

A member of the public employees retirement system defined benefit plan who has retired and received a retirement annuity and later returns to work in a position that is eligible for the defined contribution retirement plan is nonetheless ineligible to transfer into the defined contribution retirement plan and must remain a member of the public employees retirement system.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02

Section 71-08-01-07 is repealed.

~~71-08-01-07. Late election opportunity.~~

~~An eligible member who is not provided a timely opportunity to enroll in the defined contribution plan within the first six months of employment may be provided additional time to make an election if:~~

- ~~1. The executive director determines that the member was not given an election opportunity within the first six months of employment. The executive director shall then give the member a special enrollment opportunity of three months beginning from the date a new enrollment packet is mailed to the member.~~
- ~~2. The board determines that member was not given timely notice or the member was unable to make an election within the first six months. If the board determines that the member should have an additional election opportunity, the member shall have three months from the date a new enrollment packet is mailed to the member.~~

History: Effective April 1, 2002.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02

71-08-01-08. Transfer of funds.

Pursuant to subdivision a of subsection 4 of North Dakota Century Code section 15-10-7, funds may be transferred on behalf of those persons who are eligible through their employment with the state board of higher education. The following requirements apply:

1. Applicant must file a completed application for the teachers' insurance and annuity association of America - college retirement equities fund.
2. Notice of termination and verification of teachers' insurance and annuity association of America - college retirement equities fund eligibility must be filed by either the applicant or appropriate payroll officer.
3. A participating member is eligible to transfer that person's accumulated balance in the plan upon becoming a former participating member.

History: Effective April 1, 2012.

General Authority: NDCC 15-10-17

Law Implemented: NDCC 15-10-17

CHAPTER 71-08-08 TEMPORARY EMPLOYEE PARTICIPATION

Section

71-08-08-01 Temporary Employee Participation

Subsection 1 of Section 71-08-08-01 is amended as follows:

71-08-08-01. Temporary employee participation.

For each eligible employee who elects to participate as such in the defined contribution plan, the following applies.

1. Before January 1, 2025, A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.

Subsections 6, 7, 8 of Section 71-08-08-01 are created.

6. All temporary employee contributions shall be made on an after-tax basis. An employer shall not enter into a pick-up arrangement under IRC 414(h) with any temporary employee.
7. A temporary employee first employed after December 31, 2024 may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary employee status. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional one, two, three, four, five or six percent. The election to contribute an additional percent is a lifetime election and will continue for as long as the temporary employee is employed by any participating employer.
8. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee. For a temporary employee that becomes a permanent employee, all provisions applicable to permanent employees shall apply upon eligibility as a permanent employee.

History: Effective July 1, 2006; _____

General Authority: NDCC 54-52-04, 54-52.6

Law Implemented: NDCC 54-52.6-01.3, 54-52.6-02.6, 54-52-02.9, 54-52.6-09.6

CHAPTER 71-08-10
PERMANENT EMPLOYEE PARTICIPATION

Chapter 71-08-10 is created as follows:

Section

71-08-10-01 Permanent Employee Participation

71-08-10-02 Contribution

71-08-10-03 Designation of Beneficiary

71-08-10-01. Permanent employee participation.

1. Under this section "eligible employee" means a permanent employee who:
 - a. Meets all the eligibility requirements set by NDCC 54-52;
 - b. Is at least eighteen years of age;
 - c. Becomes a participating member after December 31, 2024; and
 - d. Is not eligible to participate in the law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under NDCC 15-10-17 for university system employees.
2. Effective January 1, 2025, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who first becomes a participating or deferred member under NDCC 54-52 before January 1, 2025, remains in the defined benefit retirement plan under NDCC 54-52, regardless of being rehired after December 31, 2024.
3. Except as otherwise provided under this section, effective January 1, 2025, an eligible employee who begins employment with an employer shall participate in the defined contribution retirement plan under NDCC 54-52.6 as provided under NDCC 54-52.6-02.1.
4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under NDCC 15-10-17 for university system employees.
 - a. A participating or deferred member in the defined contribution retirement plan under NDCC 54-52.6 who becomes eligible to participate in a plan enumerated under this subsection 4 shall cease participation in the defined contribution retirement plan under NDCC 54-52.6 and commence participation in the retirement plan enumerated under this subsection.
 - b. Unless subsection 2 applies, a participating member of a retirement plan enumerated under this section 4 who ceases participation in that plan and becomes an eligible employee under the defined contribution retirement plan under NDCC 54-52.6 shall participate in the defined contribution retirement plan under NDCC 54-52.6.
5. An eligible employee under section 1 must be enrolled in the plan within the first thirty days of employment.

71-08-10-02. Contribution.

1. A participating member who first joined the defined contribution retirement plan after December 31, 2024, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly four percent of the monthly salary or wage paid to the participant. In addition, the participating member may elect, within thirty days of beginning employment, to contribute monthly to the defined contribution retirement plan up to an additional three percent of the monthly salary or wage paid to the participant. All additional contributions shall be in whole percentages.
2. An employee's election for additional contributions under section 1 is a one-time, irrevocable election as long as the individual is a participating member with any participating employer.

71-08-10-03. Designation of beneficiary.

A member may designate a beneficiary or beneficiaries by filing such designation with the office. A member shall have the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change shall be effective or binding unless it is received by the office prior to the death of the member. If a vested, married member designates a beneficiary other than or in addition to a spouse, the member's spouse's consent must be obtained before benefits can be paid other than to the member's spouse.

History: Effective

General Authority: NDCC 54-52-04, 54-52.6

Law Implemented: NDCC 54-52-02.15, 54-52.6-09

CHAPTER 71-08-11

CONTRIBUTIONS

Chapter 71-08-11 is created as follows:

Section

<u>71-08-11-01</u>	<u>Adjustment for bonuses, profit sharing, and contributions paid in a month other than earned</u>
<u>71-08-11-02</u>	<u>Basis for calculation contributions – Salary reduction – Salary deferral arrangements</u>
<u>71-08-11-03</u>	<u>Employer payment of employee contributions</u>
<u>71-08-11-04</u>	<u>Retirement contributions for individuals working less than forty-hour workweek</u>
<u>71-08-11-05</u>	<u>Individual employee incentive payments</u>
<u>71-08-11-06</u>	<u>Contributions transferred from defined benefit retirement plan</u>
<u>71-08-11-07</u>	<u>Employer paid additional contribution for transferees</u>
<u>71-08-11-08</u>	<u>Employer obligations; employee eligibility</u>

71-08-11-01. Adjustment for bonuses, profit sharing, and contributions paid in a month other than month earned.

Adjustments for the following must be made for all members:

1. Participating employers shall report bonuses or profit-sharing amounts paid when remitting the contribution associated with the bonus. Recruitment and retention bonuses under North Dakota Century Code section 54-06-31 are not eligible for consideration as salary and no contributions associated with those types of bonuses shall be submitted.
2. Bonuses or profit-sharing amounts may not be submitted to the public employees retirement system for any month other than the month paid.

History: Effective

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-01, 54-52.6-02

71-08-11-02. Basis for calculating contributions - Salary reduction - Salary deferral arrangements.

1. Amounts deducted from a member's salary at the member's option to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan are part of wages or salary when calculating retirement contributions.
2. Employee contributions paid by the employer under IRC 414(h) pursuant to a salary reduction agreement do not reduce wages or salary when calculating retirement contributions.
3. Amounts contributed to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan by the employer are not part of wages or salary when calculating retirement contributions.

History: Effective

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-01, 54-52.6-02

71-08-11-03. Employer payment of employee contributions.

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52.6-09 shall be reported to the board a minimum of thirty-one days prior to the effective date.

2. An employer may not discriminate in its contributions to eligible participating employees within the same plan under North Dakota Century Code section 54-52.6-09.

History: Effective _____

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-09

71-08-11-04. Retirement contributions for individuals working less than a forty-hour workweek.

Retirement contributions must be made on wages paid to eligible permanent employees who are regularly scheduled for less than forty hours per week but who work at least twenty hours per week during a twelve-month period.

History: Effective _____

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-09.6

71-08-11-05. Individual employee incentive payments.

Individual employee incentive payments received under North Dakota Century Code section 54-06-24 or similar programs are not considered to be salary and are not subject to retirement contributions.

History: Effective _____

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-01, 54-52.6-02

71-08-11-06. Contributions transferred from defined benefit retirement plan.

1. The lump sum amount to be transferred from the defined benefit retirement plan under NDCC 54-52.6-02.2 and NDCC 54-52.6-03 based on the actuarial present value of the eligible employee's accumulated benefit obligation, as of January 1, 2025, includes an employee contribution portion and an employer contributions portion.
2. The employee contribution portion of the actuarial present value of the eligible employee accumulated benefit obligation means the employee's direct contribution to the defined benefit retirement plan plus the interest on the employee's contributions in the defined benefit retirement plan.
3. The employer contribution portion of the actuarial present value of the eligible employee's accumulated benefit obligation means the lump sum amount transferred minus the employee share. The employee shall vest in the employer contribution under the provisions found in NDCC 54-52.6-10.

History: Effective _____.

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-02.2, NDCC 54-52.6-03

71-08-11-07. Employer paid additional contribution for transferees.

For eligible employees who transfer from the defined benefit plan to the defined contribution plan, the eligible employee's state employer, on January 1 of each year an additional contribution is due, will make the additional contribution under 54-52.6-02.2(3) no later than January 15 of the year in which the additional contribution is required. Only eligible employees who are employed by a state employer at the time each additional contribution is required will receive the additional contribution.

History: Effective _____:

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-02.2, NDCC 54-52.6-03

71-08-11-08. Employer obligations; employee eligibility.

For the purpose of identifying employer obligations under the provisions of NDCC 54-52-06(1)(a), NDCC 54-52.6-02.2, and NDCC 54-52.6-09.5, and determining employee eligibility under NDCC 54-52.6-02.2, "state governmental unit" and "state employer" are those state entities, excluding entities receiving only continuing appropriation authority, that receive budgetary approval from the state legislature.

History: Effective _____:

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52-06(1)(a), NDCC 54-52.6-02.2, NDCC 54-52.6-09.5