

## **CHAPTER 54-52.2**

### **DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES**

#### **54-52.2-01. Deferred compensation program for public employees - Contract.**

The state or any county, city, or other political subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's compensation and may subsequently, with the consent of the employee, fund a deferred compensation program for the employee. The deferred compensation program may consist of a contract, purchase, or investment in a fixed or variable life insurance or annuity contract from any life underwriter duly licensed by this state who represents an insurance company licensed to contract business in this state, a savings account at a federally insured financial institution or the Bank of North Dakota, an account with or managed by a dealer registered under chapter 10-04, or any combination of contracts or accounts authorized by this section, as specified by the employee. The public employees retirement board shall specify methods of payment of deferred compensation funds to be selected by individual employees. That board shall determine the number of employees participating in a deferred compensation program necessary to qualify for automatic payroll deduction.

#### **54-52.2-02. Deferred employee's compensation - Agreements.**

The public employees retirement board, acting on behalf of each state agency, department, board, commission, or institution, may enter into contractual agreements with employees of a state agency, department, board, commission, or institution on behalf of the state to defer any portion of that employee's compensation allowed under section 457 of the Internal Revenue Code [26 U.S.C. 457].

#### **54-52.2-03. Deferred compensation program - Administration - Contract for services.**

The administration of the deferred compensation program for each state agency, department, board, commission, or institution is under the direction of the public employees retirement board. Each county, city, or other political subdivision shall designate an officer to administer the deferred compensation program or appoint the public employees retirement board to administer the program on its behalf. Payroll reductions must be made in each instance by the appropriate payroll officer. The public employees retirement board shall administer the deferred compensation program based on one or more plans in compliance with the appropriate provisions of the Internal Revenue Code and regulations adopted under those provisions. Not later than January 1, 1999, all plan assets and income must be held in trust, custodial accounts, or contracts as described in section 401(f) of the Internal Revenue Code [26 U.S.C. 401(f)] for the exclusive benefit of participants and their beneficiaries as required by section 457 of the Internal Revenue Code [26 U.S.C. 457]. Once the trust, custodial account, or contract is established as required by this section, the board shall act as fiduciary of the plan to the extent required by section 457 of the Internal Revenue Code [26 U.S.C. 457] and the board is authorized to do all things necessary for the proper administration of the plan to ensure that the plan maintains its qualified status.

#### **54-52.2-03.1. Deferred compensation program - Executive director - Staff - Funding.**

Repealed by S.L. 1987, ch. 653, § 5.

#### **54-52.2-03.2. Deferred compensation program - Board authority - Provider information.**

1. The board shall adopt rules necessary to implement this chapter and to manage the deferred compensation plan subject to the limitations of this chapter.
2. The board shall do all things necessary to preserve the tax-exempt status of the plan.
3. All providers must be authorized to do business in this state and all agents of providers must be licensed by the appropriate licensing authority or authorities in this state.
4. To continue to participate in the program, each provider must report annually, in a form and manner specified by the board, information related to their products,

- administrative and management fees, contract and maintenance charges, withdrawal penalties, market rating, and such other information the board may require.
5. The board may suspend participation of any provider that does not meet the requirements of this chapter or the rules adopted by the board.
  6. The board has the authority to establish a deferred compensation advisory committee which shall include active providers who have signed a provider administrative agreement with the state of North Dakota deferred compensation plan.

**54-52.2-03.3. Benefit payments to alternate payee under qualified domestic relations order.**

1. The board or a vendor contracted for by the board shall apportion a participating member's account in the deferred compensation plan under this chapter in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to the board to determine if the domestic relations order is qualified under this section and pursuant to the plan document established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the participating member. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under this chapter, or to provide increased benefits. A qualified domestic relations order must specify:
  - a. The name and the last-known mailing address of the participating member and the name and mailing address of each alternate payee covered by the order;
  - b. The amount or percentage of the participating member's benefits to be paid by the plan to each alternate payee;
  - c. That the alternate payee must take a lump sum payment of the benefits allocated to the alternate payee within one hundred twenty days of the later of the board's acceptance of the qualified domestic relations order or the entry of the order by the court; and
  - d. Each plan to which the order applies.

**54-52.2-03.4. Administrative expenses - Continuing appropriation.**

1. A participating member shall pay the administrative expenses of the plan in a manner determined by the board. The board:
  - a. Or a vendor retained by the board, may charge reasonable administrative expenses and deduct those expenses from a participating member's account in the deferred compensation plan established under this chapter.
  - b. May pay the administrative expenses of the plan from fines and fees collected from a vendor in a manner determined by the board.
  - c. Shall deposit vendor fines and fees and any money deducted from a participating member's account in an administrative expenses account with the state treasurer.
  - d. May use funds from the payroll clearing account established under section 54-52.3-03 and the administrative expenses account to pay for consulting expenses.
2. All money in the payroll clearing account and the administrative expenses account are appropriated to the board on a continuing basis for the purpose of retaining a consultant as required for the administration of this chapter.

**54-52.2-04. Definition - Employee.**

For the purpose of this chapter, "employee" means any person, whether appointed, elected, or under contract, employed by the state or a political subdivision, who is at least eighteen years of age and employed in an approved and regularly funded position of unlimited duration for twenty hours or more per week and at least five months each year. For purposes of this chapter, "employee" also means a member of the legislative assembly.

**54-52.2-05. Administrators authorized to make payments or investments.**

Notwithstanding any other provision of law to the contrary, those persons designated to administer the deferred compensation program are hereby authorized to make payments or investments under the deferred compensation program as specified by the employee in accordance with section 54-52.2-01. The payments or investments may not be construed to be a prohibited use of the general assets of the state, county, city, or other political subdivision.

**54-52.2-06. Deferred compensation program - Benefits - Taxation - Exemption from judicial process - Assignment.**

The deferred compensation program established by this chapter shall exist and serve in addition to retirement, pension, or benefit systems established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall effect a reduction of any retirement, pension, or other benefit provided by law. However, with the exception of Roth contributions, any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the employee. Any unpaid benefits under the deferred compensation program established by this chapter are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, except as provided by section 54-52.2-03.3. Neither the employee, the employee's beneficiary, nor any designee of the employee or the employee's beneficiary has the right to commute, sell, assign, transfer, or otherwise convey the right to receive payments under this chapter.

**54-52.2-07. Liability under deferred compensation program.**

The financial liability of the state, county, city, or other political subdivision under a deferred compensation program is limited in each instance to the value of the employee's deferred compensation account, and the state, county, city, or other political subdivision is not responsible for any loss which may result from investment of the deferred compensation under the deferred compensation program.

**54-52.2-08. Employer contribution.**

Employer contributions to the deferred compensation program established under this chapter are authorized as permitted under the Internal Revenue Code.

**54-52.2-09. Employer match for members of defined contribution retirement plan.**

An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, 2024, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.

**Employer match for members of defined contribution retirement plan. (Effective on the date identified if the contingency is satisfied) (Contingent effective date - [See note](#))**

An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after the day before the effective date of this Act, who elects to contribute less than the

optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.