

Section 71-01-02-03 is amended as follows:

71-01-02-03. Candidate eligibility.

1. Any active participating member employee, 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 4 of North Dakota Century Code section 54-52-03, may become a candidate for election to the board. A department or political subdivision 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 or who is eligible to receive deferred vested retirement benefits, 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, _____, 2010

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

Law Implemented: NDCC 54-52-03

A new subsection 8 is added to Section 71-01-02-09 as follows:

71-01-02-09. Canvassing rules.

1. Ballot counting by election committee members or their authorized representatives will commence at nine a.m. on the third Monday of June 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, _____, 2010

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Subsection 14 of Section 71-02-01-01 is amended as follows:

CHAPTER 71-02-01 DEFINITIONS

71-02-01-01. Definitions. As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:
 - a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.
 - b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.
 - c. The member's mandatory contributions made after July 1, 1977.
 - d. The member's vested employer contributions made after January 1, 2000, pursuant to North Dakota Century Code section 54-52-11.1.
 - e. The interest on the sums determined under subdivisions a, b, c, and d, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's termination of employment or retirement.
 - f. The sum of any employee purchase or repurchase payments.
2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board.
3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.

4. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
5. "Bonus" means cash compensation for services performed in addition to base salary excluding commission and shift differentials. Bonus does not include lump sum payments of sick leave provided under North Dakota Century Code section 54-06-14 or lump sum payments of annual leave or vacation pay.
6. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.
7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.
8. "Contribution" means the payment into the fund as a percentage of the salary of a member.
9. "Correctional officer" means a person who has completed a correctional officer course approved or certified by the North Dakota department of corrections and rehabilitation and is employed by a correctional facility as defined in North Dakota Century Code chapter 12-44.1.
10. "County judge" means a judge who was elected pursuant to North Dakota Century Code section 27-07.1-01 or an individual holding the position of county judge, county justice, or judge of county court prior to the general election in 1982, who meets all the eligibility requirements established under North Dakota Century Code chapter 54-52.
11. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application in accordance with the Uniformed Services Employment and Reemployment Rights Act.
12. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years, or indefinitely if the leave of absence is due to interruption of employment.
13. "Medical consultant" means a person or committee appointed by the board of the North Dakota public employees retirement system to evaluate medical information submitted in relation to disability applications, recertifications, and rehabilitation programs or other such duties as assigned by the board.
14. "Normal retirement age" except for members of the national guard and law enforcement, means age sixty-five except as unless otherwise provided. For members of the national guard and law enforcement, normal retirement age means age 55, unless other wise provided.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993; July 1, 1994; June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004; July 1, 2006, _____, 2010

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52

Subsections 2 and 6 of Section 71-02-03-02.2 are amended as follows:

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 ~~for as long as~~ while the employee is employed by a participating employer but for no longer than a 15 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 15 year time period.

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

Section 71-02-03-02.4 is amended as follows:

71-02-03-02.4. Crediting purchased or repurchased service. Service purchased or repurchased will be credited in the following manner:

1. ~~The member's record must be updated with the additional service credit once the account is paid in full~~ For each month the system receives a payment towards a purchase contract, the member will earn a proportion of service credit.
2. ~~If the member takes a refund, retires, or the member's account is closed due to delinquency, service credit must be granted by taking the months of service credit being purchased times the percentage paid. The percentage is determined by taking the total payments made toward the purchase divided by the total amount to be paid over the term of the purchase. Service credit equal to a fraction is deemed to be a whole month of service credit.~~
3. 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 employee's retirement system will be transferred to the judge's 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, _____, 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

Subsection 6 of section 71-02-03-07 is amended as follows:

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 15th of the month following the month of the employee's retirement termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.

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

General Authority: NDCC 54-52-04

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

Subsections 2 and 3 of section 71-02-04-02 are amended as follows:

71-02-04-02. Special retirement options - Application.

1. A member may elect a retirement option by filing an application with the office no less than thirty days prior to the beginning date of benefit payments. An application may be filed later than thirty days if approved by the executive director upon receiving sufficient evidence that the application was delayed by the member's employer.
2. A member may revoke the election of an optional benefit as provided in subsection 1 and make a new election, if such revocation is received in writing before the first retirement check is cashed but no later than fifteen days after the first retirement check has been issued. If the member changes the member's election less than fifteen days prior to the named beginning date of benefits, the first retirement payment may be delayed up to two months. Any delayed payment must be adjusted to include any deferred retirement payments. If the member's first retirement payment is paid by direct deposit and the member wishes to revoke the election of the benefit, then the member must immediately notify NDPERS of their election. The benefit will only be revoked if NDPERS is able to reverse the direct deposit paid to the bank within the bank reversal window.
3. A member may not revoke the elected benefit after receiving and cashing the first benefit check or if paid by direct deposit, after the bank reversal window has expired, unless, the member can provide sufficient evidence to the executive director that the factual basis by which the election was made later proved to be incorrect and such was due in part to representation or misrepresentations made by the employer or the office.

History: Amended effective November 1, 1990; May 1, 2004, . _____, 2010

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

Law Implemented: NDCC 54-52-17

Section 71-02-04-03 is amended as follows:

71-02-04-03. Payment date - Retirement benefits. Except for retirement options provided in section 71-02-04-02, a member's retirement benefit shall commence on the first day of the month which follows the member's eligibility for the benefit and which is at least thirty days after the date on which the member filed an application with the office. Notwithstanding any other provision in this article, benefits must begin no later than April first of the calendar year after the calendar year in which the member retires or attains the age of seventy and one-half years, whichever is later. If the member is employed but ineligible for active participation in the retirement plan, the member's benefits must begin no later than April first of the calendar year after the calendar year in which the member attains the age of seventy and one-half years. In the absence of a retirement application, benefits shall be paid based on a single life, or normal retirement for judges, payment option. Benefits must be sent to the member's last-known address. If the benefit checks are returned with no forwarding information, the benefits will remain in the fund, and will be distributed in a lump sum retroactive to the required beginning date upon location of the member.

History: Amended effective November 1, 1990; July 1, 1994; July 1, 2000, _____, 2010.

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

Law Implemented: NDCC 54-52-17

Section 71-02-04-04 is amended as follows:

71-02-04-04. Optional benefits. A member may elect, as provided in section 71-02-04-02, to receive one of the following optional benefits in lieu of the regular single life, or normal for judges, retirement benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced retirement benefit during the member's lifetime 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 shall 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 shall 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 shall be canceled and the member's benefit shall be returned to the single life amount. Payment of the single life amount shall 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 retirement benefit during the member's lifetime 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 shall 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 shall 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 shall be canceled and the member's benefit shall be returned to the single life amount. Payment of the single life amount shall 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. ~~**Level social security option.** A member who retires prior to receiving social security benefits may elect the level social security option. Under this option, the member's monthly benefit is adjusted so the~~

~~combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted benefit payable from the fund must be determined on an actuarial equivalent based on an age no earlier than sixty-two and no later than full retirement age as specified by the social security administration as chosen in writing by the member. A member is not eligible for the level social security option if it results in a benefit payment of less than one hundred dollars per month. A member shall submit an estimated benefit from social security that was computed no more than six months before commencement of retirement benefits.~~

4. **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.
5. ~~**Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the single life annuity option. The member is permitted to choose one of the optional forms of payment, excluding the level social security income option, for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.~~
6. ~~**Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The ongoing benefits will be actuarially increased to reflect the lump sum.~~

History: Amended effective September 1, 1982; November 1, 1990; July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008, _____, 2010.

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

Law Implemented: NDCC 54-52-17

Section 71-02-04-04.1 is created as follows:

71-02-04-04.1. Benefit Modifications. A member may elect as provided in section 71-02-04-02, to receive one of the following benefit modifications.

1. **Level social security option.** A member who retires prior to receiving social security benefits may elect the level social security option. Under this option, the member's monthly benefit is adjusted so the combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted

benefit payable from the fund must be determined on an actuarial equivalent based on an age no earlier than sixty-two and no later than full retirement age as specified by the social security administration as chosen in writing by the member. A member shall submit an estimated benefit from social security that was computed no more than six months before commencement of retirement benefits. A member may only select this option if they have selected to receive a single life/normal retirement option.

2. **Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the single life annuity option. The member is permitted to choose one of the optional forms of payment as defined in 71-02-04-04 for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.
3. **Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The member is permitted to choose one of the optional forms of payment as defined in 71-02-04-04. The ongoing benefits will be actuarially increased to reflect the lump sum.
4. **Graduated benefit option.** The graduated benefit option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The member is permitted to choose one of the optional forms of payment for ongoing benefits as defined in 71-02-04-04. The ongoing benefits will be actuarially reduced to reflect the election of the graduated benefit option.

History: Created effective _____, 2010

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

Law Implemented: NDCC 54-52-17

Section 71-02-04-07 is amended as follows:

71-02-04-07. Amount of early retirement benefit.

1. Except for members of the national guard, the early retirement benefit shall be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than the age at which the member would be at the member's normal retirement date on the date the member's early retirement benefit commences effective date.

2. For members of the national guard, the early retirement benefit must be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for

each month (six percent per year) that the member is younger than age fifty-five on the date of the member's early retirement benefit ~~commence~~effective date.

History: Amended effective September 1, 1982; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006, _____, 2010

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

Law Implemented: NDCC 54-52-17

Section 71-02-04-10 is amended as follows:

71-02-04-10. Erroneous payment of benefits - Overpayments.

1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.
2. A person who receives an overpayment is liable to refund those payments upon receiving a written explanation and request for the amount to be refunded. All overpayments 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 amount of the overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.
3. If the overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written ~~request for refund~~ notice of overpayment with the minimum repayment amount no less than fifty dollars per month ~~with the total repayment period not to exceed thirty-six months~~. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.
4. If the overpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of six percent on the outstanding balance to compensate the fund for lost earnings, from the time the erroneous benefit was paid through the time it has been refunded in full, ~~plus applicable interest~~. Recovered funds are first applied to interest, and if any amount is left over, that amount is applied to principal. The recipient may make repayment arrangements, subject to the executive director's approval, within sixty days of the written request for refund with the minimum repayment amount no less than fifty dollars per month ~~with the total repayment period not to exceed thirty-six months~~. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit

Law Implemented: NDCC 54-52-17

Subdivision a of subsection 1 of Section 71-02-06-01 is amended as follows:

71-02-06-01. Conditions for return.

1. The accumulated contributions of a member who terminates permanent employment:
 - a. Before accumulating three years of service credit and whose account balance is less than \$1000.00 shall be automatically refunded unless the member elects to remain in an inactive status.
 - b. After accumulating three years of service credit shall be refunded upon application filed with the executive director.
 - c. The termination date for purposes of processing an application for refund or rollover must be the last date for which a member receives salary except for a member who is on an approved leave of absence. For members who are paid salary in any month following actual separation from employment if the salary is received after the normal processing date, the termination date for purposes of processing the application must be the same date as the date that the last paycheck was issued as salary.
2. Retirement contributions must be returned if a membership enrollment application form has not been filed with the office. Contributions will be returned until proper membership enrollment forms have been filed.

History: Amended effective November 1, 1990; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004, _____, 2010

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06, 54-52-17

Section 71-02-07-02 is amended as follows:

71-02-07-02. Return to service - Retired member. The benefits of a retired member who returns to permanent employment shall be suspended without interest accruing on the suspended account, except as provided in subsection 1 of North Dakota Century Code section 54-52-05. Upon subsequent termination, the member's benefit shall be recalculated as follows:

1. ~~If the period of subsequent employment is less than two years, the member may elect:~~
 - a. ~~A return of the member's contributions made after reemployment, and the suspended benefit restored, adjusted for the member's age at subsequent termination and for benefit payments received prior to reemployment; or~~
 - b. ~~A recalculation of the member's benefit based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at final retirement, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.~~
2. ~~1. If the period of subsequent employment is more than two years, t~~The member's benefit shall be based on the benefit provisions in effect at final retirement and shall

include the member's and spouse's age and salary earned during the period of reemployment, ~~and together with~~ total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment. If a different option is selected at the second retirement date, the member and office will submit information as required to make an actuarial determination of the elected benefit and the related payment of such.

~~32. If a member dies during subsequent employment, the member's initial retirement benefit option election will apply. If a benefit election was an optional benefit under subsection 1 or 2 of section 71-02-04-04, then the member's benefit must be recalculated based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at death, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment. †The member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member and spouses's ages, salary earned during the period of reemployment, and total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment.~~

History: Amended effective November 1, 1990; July 1, 1998; May 1, 2004; July 1, 2006, _____, 2010 .

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

Law Implemented: NDCC 54-52-17

Section 71-02-11-04 is amended as follows:

71-02-11-04. Payment. The cost for purchase of eligible military service in the North Dakota public employees retirement system and the North Dakota highway patrolmen's retirement system is as follows:

1. The cost for any required employee contributions to be paid by the member may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under subsection 1, 2, or 3 of section 71-02-03-02.2. ~~If retirement occurs before purchase is complete, service being purchased will not be credited to the account for retirement purposes until the payment is complete.~~ If no payments have been made, no credit will be awarded. To prevent any delay in issuing the employee's first retirement check, purchase must be completed at least thirty days prior to retirement date.
2. The employer cost will be assessed to the member's most recent participating employer. Upon being billed by the North Dakota public employees retirement system, the participating employer will have thirty days in which to make payment in full. If, after sixty days, the employer has not made payment in full, a civil penalty on fifty dollars will be assessed, and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.
3. ~~If the employer contributions are paid and the member becomes delinquent for required employee contributions, then the public employees retirement system will prorate the credit the employee~~

contributions have paid for by the member and this credit will be added to the member's file.

History: Effective September 1, 1991; amended effective May 1, 2004; July 1, 2006, _____, 2010 .

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.4(5), 54-52-17.14

Subsections 2 and 3 of Section 71-03-03-01 are 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, ~~provided if~~ the employee submits an application for coverage within the first thirty-one days of employment or eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health insurance plan.
2. ~~Addition of a spouse~~ Marriage. An employee who previously waived coverage ~~must is also eligible to~~ 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 is also eligible to~~ 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, _____, 2010 .

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

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

71-03-04-01. Employer contribution. Each agency shall pay to the board the full amount of the employer contribution by the fifteenth of each month. The agency will verify the number of eligible employees and the level of coverage for each. An employee is eligible for an employer contribution for the month following the month of employment. If an eligible employee terminates employment prior to the effective date of coverage, no employer contribution is required. The employer contribution ends the month following the month of termination of employment. When an employee transfers from one state agency to another, the new agency is responsible for the payment of the premium for the first of the month following employment.

History: Effective October 1, 1986; amended effective November 1, 1990, _____, 2010 .

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-06

Section 71-03-04-05 is amended as follows:

71-03-04-05. Premium for basic term life insurance. All state departments and those political subdivisions that elect to participate in the group life insurance program must pay the board the full premium for the basic term life insurance for each of its eligible employees.

History: Effective October 1, 1986; amended effective July 1, 1994; July 1, 1998, _____, 2010 .

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-01(7)

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

71-03-05-05. Appeal process. If an employee's application for benefits has been denied in whole or in part by the board or its agent, the employee will be notified in writing of the denial and the reasons. Within sixty days of the date shown on the denial notice, the employee may file a petition for review. The petition must be in writing, the reasons stated for disputing the denial and be accompanied by any documentatryion material. Should the employee 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 person 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, _____, 2010 .

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

Subdivision a of subsection 4 of Section 71-03-05-08 is amended as follows:

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. ~~with the total repayment period not to exceed thirty six months.~~ 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 will be canceled retroactive to the first day of the month following the month for which full premium payment was received. The public employees retirement system will provide written notice advising the individual that payment in full must be received within thirty days of the written notification to reinstate coverage retroactively to the date that coverage was canceled.

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

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

Section 71-03-06-01 is amended as follows:

71-03-06-01. Enrollment. ~~4. New~~ An eligible employee of a participating political subdivision ~~is~~ is entitled to coverage the first of the month following the month of employment, if the employee submits an application for coverage within the first thirty-one days of employment, or 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 ~~is also eligible to 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 ~~is also~~ ~~eligible to enroll for coverage at the same time that the employee's~~ eligible dependent is enrolled.

~~2. Eligible employees of qualifying political subdivisions are entitled to individual coverage if the political subdivision for which the employee works does not offer its employees a group health insurance plan and the employee submits an application for coverage within the first thirty-one days of employment or eligibility for one of the special enrollment periods as follows:~~

- ~~a. Loss of coverage under any other health insurance plan.~~
- ~~b. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage is also eligible to enroll for coverage at the time the employee's spouse is enrolled.~~
- ~~c. Addition of a dependent as a result of birth, adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage is also~~

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~~eligible to 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, _____, 2010 .

General Authority: NDCC 54-52-04

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

Section 71-03-06-02 is amended as follows:

71-03-06-02. Late enrollment. Political subdivisions must follow the same late enrollment procedures as outlined in section 71-03-03-02. ~~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 and may be subject to a six-month waiting period for preexisting conditions. Upon a~~

~~showing of good cause, the executive director may waive the thirty one day application requirement.~~

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

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

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

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

71-03-06-03. Open 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, _____, 2010 .

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

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

Section 71-03-06-05 is amended as follows:

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. ~~A dependent of an employee with family coverage may continue coverage with the group after the dependent's eligibility would ordinarily cease. An employee's dependent, including a divorced or widowed spouse or children no longer dependent on the employee, may continue with the group after the dependent's eligibility would ordinarily cease. Coverage is limited to a period of thirty six months and must be discontinued if the payment of the premium is not made in a timely manner. Dependents must notify the retirement board within sixty days of the qualifying event and submit an application in a timely manner. An individual who fails to submit an application to the retirement board within the sixty days is not eligible for coverage.~~

History: Effective June 1, 1996, _____, 2010 .

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 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. ~~The employee's contribution may be paid by payroll deduction or any other method acceptable to the agency.~~

History: Effective June 1, 1996, _____, 2010 .

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

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

Section 71-03-07-01 is amended as follows:

71-03-07-01. Employer contribution. Each employer must submit to the board the full monthly premium amount for each eligible employee enrolled in the group insurance plan. The employer must verify the number of eligible employees and the level of coverage for each. An employee is eligible for an employer contribution for the month following the month of employment. If an eligible employee terminates employment prior to the effective date of coverage, no employer contribution is required. The employer contribution ends the month following the month of termination of employment. An employee's coverage must end the month after termination of employment. When an employee transfers from one participating enrolled employer to another, the new employer is responsible for the payment of the ~~submitting the~~ premium for the first of the month following employment.

History: Effective June 1, 1996, _____, 2010.

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

Law Implemented: NDCC 54-52.1-03.1

Section 71-03-07-02, 71-03-07-03 and 71-03-07-05 are amended as follows:

71-03-07-02. Information to employee. Each employer shall inform its each eligible employees of their employee's right to group insurance and the process necessary to enroll. The employer shall provide each eligible employee such forms as necessary to enroll in the group insurance program.

History: Effective June 1, 1996, _____, 2010.

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

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

71-03-07-03. Collecting employee contributions. Each employer shall collect any employee contribution due and submit it with ~~any~~ the employer contribution to the retirement board each month. When an employee on an approved leave of absence requests to continue in the group, the employer shall collect the full amount of the premium from the employee each month and remit it to the retirement board. The minimum employer contribution will be determined by the retirement board and must be consistently applied to all eligible employees.

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

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

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

71-03-07-05. Premium for basic term life insurance. All political subdivisions that elects to participate in the group life insurance program shall must pay to the retirement board the full premium for the basic term life insurance for each of its eligible employees.

History: Effective June 1, 1996, _____, 2010 .

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

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

Subsections 1 and 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 in the ~~participant agreement~~ 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 a written 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 participant's 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 seven 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.

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

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

Section 71-04-03-02 is amended as follows:

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 during for the month in which income is being earned and a deferral is being requested.

History: Effective April 1, 1989, _____, 2010.

General Authority: NDCC 28-32-02

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

Section 71-04-03-05 and 71-04-03-06 are amended as follows:

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 partial distribution of the participant's deferred compensation 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, _____, 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 an ~~elimination~~ suspension of monthly deferrals.

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

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

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

Sections 71-04-04-01, 71-04-04-02, 71-04-04-03, 71-04-04-04, 71-04-04-05, 71-04-04-06, 71-04-04-07 and 71-04-04-10 are amended as follows:

71-04-04-01. Enrollment. The retirement board shall design and provide employees with a participant agreement to facilitate the enrollment in the plan. The participant agreement must provide for the collection of all information regarding identification of the employee, starting date of the deduction, the payroll period affected, name of the provider company, and the provider representative.

History: Effective April 1, 1989; amended effective September 1, 1997; May 1, 2004, _____, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-01, 54-52.2-02, 54-52.2-05

71-04-04-02. Booklets. The retirement board shall, upon request of the employee, make available a descriptive booklet setting forth the enrollment requirements of the plan, explanation of the deferred compensation plan under section 457 of the Internal Revenue Code, and investment options under the plan.

History: Effective April 1, 1989; amended effective September 1, 1997; May 1, 2004, _____, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-04-03. Provider agreement. The retirement board shall establish a written provider agreement for the authorization of companies or organizations who offer investment options to public employees. This agreement may include registration and reporting requirements, educational requirements of sales representatives, and limitations of investment options.

History: Effective April 1, 1989, _____, 2010 .

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-04-04. Employer agreement. The retirement board shall establish a written agreement for all employers, other than state departments, agencies, boards, or commissions, which appoint the state to administer their deferred compensation plan. This agreement includes requirement for the employer to adopt the retirement board's rules, employers to make the requested payroll deductions upon proper application by the employee, remit the deductions directly to the retirement board along with a listing of deferred compensation deductions for all employees participating in the plan, submit all provider participant contracts to the retirement board, hold all participant account information as confidential, and notify the retirement board within thirty days of participant's termination of employment.

History: Effective April 1, 1989; amended effective April 1, 2002; July 1, 2006, _____, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-04-05. Payroll deduction authorization. The retirement board shall deliver to the payroll division of each employer a copy of the signed participant agreement as the payroll division's authorization to begin deductions.

History: Effective April 1, 1989, _____, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-02

71-04-04-06. Participant accounts. The retirement board shall have each provider of investment services establish individual accounts to record the participant's contributions, earnings, and other account activity.

History: Effective April 1, 1989, _____, 2010 .

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-04-07. Separation from service. The retirement board shall notify the participant, provider company, and provider representative of the employee's separation from service and eligibility for payment of benefits.

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

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

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

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71-04-04-10. Processing deductions. The retirement board will process and remit employee deferred compensation deductions to the designated provider company within three business days following receipt in good order of all funds and documentation from the employer.

History: Effective July 1, 2006, _____, 2010 .

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

Sections 71-04-06-01, 71-04-06-02, 71-04-06-03, 71-04-06-06, 71-04-06-07, 71-04-06-08, 71-04-06-09, 71-04-06-11 and 71-04-06-12 are amended as follows:

71-04-06-01. Application. Those firms desiring to offer investment services for the deferred compensation plan shall first notify the retirement board, in writing, of the firms' willingness to become a provider.

History: Effective April 1, 1989, _____, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-06-02. Administrative agreement. Firms expressing a desire to become a provider of investment services under the deferred compensation plan

must agree to all provisions found in and sign the retirement boards' administrative agreement. The administrative agreement sets forth the responsibilities of the provider to the plan, the retirement board, and the employee and stipulates that the provider abide by the plan and rules and regulations adopted by the retirement board for the administration of the plan.

History: Effective April 1, 1989, _____, 2010 .

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-06-03. Sales representatives. All sales representatives of the provider approved by the retirement board to solicit employees must be fully trained to explain the various investment options available through the provider, be able to explain what the deferred compensation program is as found under section 457 of the Internal Revenue Code, and be licensed with the North Dakota state securities commissioner for the sale of registered or unregistered securities or the North Dakota state insurance commissioner for the sale of insurance contracts or policies, or both.

History: Effective April 1, 1989, _____, 2010 .

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

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71-04-06-06. Retirement board report. The provider shall deliver quarterly reports, in an approved electronic format, to the retirement board detailing the activity of each participant's account. The quarterly report must be delivered within thirty days of the end of each calendar quarter and must include an alphabetical listing of the participants, social security numbers of the participants, the provider's contract number for the participants (if any), type of account for each participant, beginning account balance forwarded from the previous reporting period, contributions made by the participants for the current reporting period, transfers and rollovers from other eligible plans during the reporting period, investment earnings or losses added to the account (if any for the reporting period), any withdrawals made during the reporting period, administrative charges assessed against the account during the reporting period, transfers and direct rollovers to other eligible plans during the reporting period, and the account balance at the end of the reporting period. The report columns must be totaled. The quarterly report must include active, inactive, and accounts in payout status, with the exception of accounts which have been annuitized, and be for all payroll divisions for the plan.

History: Effective April 1, 1989; amended effective November 1, 1990; July 1, 1994; May 1, 2004; July 1, 2006, _____, 2010.

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

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

71-04-06-07. Account transfer. The provider shall allow any participant who so requests, the ability to transfer the participant's account to another provider on a tax-free basis. The request to the provider must be made in writing by the retirement board or its designated representative. The transfer must be made within

thirty days of the provider's receipt of the transfer request.

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

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

Law Implemented: NDCC 54-52.2-03

71-04-06-08. Benefit requests. The provider shall honor all requests for benefit or refund payments made upon notification of the employee's separation from service by the retirement board.

History: Effective April 1, 1989; amended effective May 1, 2004, _____, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-06-09. Benefit payments. The provider shall make benefit payments to the participant in the manner designated by at the participant's ~~designated mailing address, or, if requested, make direct deposits of the benefits at the participant's bank, savings and loan, or credit union.~~

History: Effective April 1, 1989, _____, 2010 .

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

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71-04-06-11. Provider reporting failure - Penalty. Should the provider fail to deliver the required report within a thirty-day period beyond the end of the reporting period, notice must be given by certified mail of the provider's failure to comply. The provider shall then have thirty days from the date of the certified letter to comply with the reporting requirement. If the provider fails to deliver the required report within the thirty-day period, the provider is in violation of the administrative agreement and shall lose active provider status as described under subsection 1 of section 71-04-04-09. If the provider has not filed the report within ninety days after the end of the reporting period, the provider shall lose provider status as described under subsection 2 of section 71-04-04-09. Loss of provider status results in all current contributions of active participants being suspended effective in the next payroll cycle. The retirement board will notify all participants of the company's failure to deliver the required reports. Current participants will be required to either select a new provider for future contributions, or have their account go into a dormant status with the company losing provider status. The retirement board will then terminate the agreement with the provider.

History: Effective April 1, 1989; amended effective November 1, 1990; July 1, 1994; May 1, 2004, _____, 2010 .

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

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

71-04-06-12. Provider suspension - Employee account transfers. Should the provider be in violation of the administrative agreement, employees shall have the option of transferring their individual accounts to another qualified provider. The employee shall also have the option of leaving the account with the

provider, ~~in a dormant status, to be dealt with by~~ until the employee is eligible for a distributable event upon separation from service.

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

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

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

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

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 benefit in accordance with 71-05-02-05,~~ the account is closed, or until benefit payments commence to the member's beneficiary ~~or dies.~~

History: Effective July 1, 1998, _____, 2010 .

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

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

Subsection 2 is amended and a new subsection 6 is created in Section 71-04-04-04 as follows:

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 ~~for as long as~~ while the member is employed by the participating employer but for no longer than a 15 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 15 year time period.

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

Section 71-05-04-06 is amended as follows:

71-05-04-06. Crediting purchased or repurchased service. Service purchased or repurchased will be credited in the following manner:

1. ~~The contributor's record must be updated with the additional service credit once the account is paid in full. For each month the system receives a payment towards a purchase contract, the member will earn a proportion of service credit.~~
2. ~~If the contributor or member of an alternative retirement system terminates, retires, or the contributor's account is closed due to delinquency, service credit shall be granted by taking the months of service credit being purchased times the percentage paid. The percentage is determined by taking the total payments made toward the purchase divided by the total amount to be paid over the term of the purchase. Service credit equal to a fraction is deemed to be a whole month of service credit.~~

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

Subsection 6 of Section 71-05-04-09 is amended as follows:

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 15th of the month following the month of the employee's retirement 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, _____, 2010 .

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-10.2

Subsection 2 and 3 of Section 71-05-05-02 are amended as follows:

71-05-05-02. Special retirement options - Application.

1. A member may elect a retirement option by filing an application with the office no less than thirty days prior to the beginning date of benefit payments. An application may be filed later than thirty days prior to the beginning date of benefit payments if approved by the plan administrator upon receiving sufficient evidence that the application was delayed by the member's employer.
2. A member may revoke the election of an optional benefit as provided in subsection 1 and make a new election if such revocation is received in writing before the first retirement check is cashed but no later than fifteen days after the first retirement check has been issued. If the member changes the member's election less than fifteen days prior to the named beginning date of benefits, the first retirement payment may be delayed up to two months. Any delayed payment must be adjusted to include any deferred retirement payments. If the member's first retirement payment is paid by direct deposit and the member wishes to revoke the election of the benefit, then the member must immediately notify NDPERS of their election. The benefit will only be revoked if NDPERS is able to reverse the direct deposit paid to the bank within the bank reversal window.
3. A member may not revoke the elected benefit after receiving and cashing the first benefit check or if paid by direct deposit, after the bank reversal window has expired, unless the member can provide sufficient evidence to the executive director that the factual basis by which the election was made later proved to be incorrect and such was due in part to representation or misrepresentations made by the employer or the retirement office.

History: Effective October 1, 1991; amended effective May 1, 2004, _____, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

Subsections 3 and 4 of Section 71-05-05-04 are repealed in this section and a new section 71-05-05-04.1 is created.

71-05-05-04. Optional benefits. A member may elect, as provided in section 71-05-05-02, to receive one of the following optional benefits in lieu of the regular early or normal retirement benefit.

1. **One hundred percent joint and survivor benefit.** A member may receive an actuarially reduced retirement benefit during the member's lifetime 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. In the event the member's spouse predeceases the member or, in the event of divorce, the

option shall be canceled and the member's benefit shall be returned to the normal retirement amount. Payment of the normal retirement amount shall 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. Should the member remarry and wish to change such designation, a new actuarial retirement benefit will be calculated.

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, death certificate, birth certificate verifying age, and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs.

2. **Twenty-year or ten-year term certain.** 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.
3. ~~**Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the normal annuity option. The member is permitted to choose one of the optional forms of payment for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.~~
4. ~~**Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The ongoing benefits will be actuarially increased to reflect the lump sum.~~

History: Effective October 1, 1991; amended effective July 1, 2006; April 1, 2008, _____, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-04.1. Benefit Modifications. A member may elect as provided in section 71-05-05-02 to receive one of the following benefit modifications.

1. **Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve

monthly payments determined under the normal annuity option. The member is permitted to choose one of the optional forms of payment for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.

2. Deferred normal retirement option. The deferred normal retirement option will only be available to members who retire after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The ongoing benefits will be actuarially increased to reflect the lump sum.

3. Graduated benefit option. The graduated benefit option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The member is permitted to choose one of the optional forms of payment for ongoing benefits excluding the deferred normal retirement option or partial lump sum option. The ongoing benefits will be actuarially reduced to reflect the election of the graduated benefit.

History: Created effective _____, 2010

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

Section 71-05-05-07 is amended as follows:

71-05-05-07. Amount of early retirement benefit. The early retirement benefit must be an amount actuarially reduced from the normal retirement benefit by one-half of one percent for each month (six percent per year), that the member is younger than age fifty-five on the date of the member's early retirement benefit commences effective date.

History: Effective October 1, 1991, _____, 2010

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

Subsection 3, 4 and 5 of Section 71-04-05-10 are amended as follows:

71-05-05-10. Erroneous payment of benefits - Overpayments.

1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.
2. A person who receives an overpayment is liable to refund those payments upon receiving an explanation and a written request for the amount to be refunded from the executive director. All overpayments 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 amount of the

overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.

3. If an overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written notice of overpayment with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.

4. If the overpayment was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of six percent on the outstanding balance to compensate the fund for lost earnings from the time the erroneous benefit was paid through the time it has been refunded in full. Recovered funds are first applied to interest, and if any amount is left over, that amount is applied to principal. The recipient may make repayment arrangements, subject to the executive director's approval, within sixty days of the written request for refund with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.

5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

History: Effective April 1, 2002; amended effective July 1, 2006, _____, 2010 .

General Authority: NDCC 32-03-04, 39-03.1-06, 54-52-04(12), 54-52-14.2

Law Implemented: NDCC 39-03.1-25

Subsection 1 of section 71-05-06-01 is amended as follows:

71-05-06-01. Return of contributions - Conditions for return. The accumulated contributions of a member who terminates permanent employment:

1. Before accumulating ten years of service credit and whose account balance is less than \$1000.00 must be automatically refunded unless the member elects to remain in an inactive status.
2. After accumulating ten years of service credit, accumulated contributions must be refunded upon application filed with the retirement office.

History: Effective October 1, 1991, _____, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-10.1

Section 71-05-07-01 is amended as follows:

71-05-07-01. Return to service – Retired member. The benefits of a retired member who returns to permanent employment must be suspended. Upon final retirement, the member's benefit must be recalculated as follows:

- ~~1. If the period of subsequent employment is less than two years, the member may elect:
 - ~~a. A return of the member's contributions made after reemployment, and the suspended benefit restored, adjusted for the member's age at final retirement and for benefit payments received prior to reemployment; or~~
 - ~~b. A recalculation of the member's benefit based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at final retirement, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.~~~~
21. If the period of subsequent employment is more than two years, ~~t~~The member's benefit must be based on the benefit provisions in effect at final retirement and shall include the member's and spouse's age, and salary earned during the period of reemployment, and together with total service earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment. If a different option is selected at the second retirement date, the member and office will submit information as required to make an actuarial determination of the elected benefit and the related payment of such.
32. If a member dies during subsequent employment, the member's initial retirement benefit option election will apply. ~~If the benefit election was an optional benefit under section 71-05-02-04, then the member's benefit must be recalculated based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at death, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.~~ The member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member and spouses's ages, salary earned during the period of reemployment, and total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment.

History: Effective October 1, 1991; amended effective May 1, 2004, _____, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

Section 71-06-01-02 is amended as follows:

71-06-01-02. Calculation of retiree health insurance credit. Retiree health insurance credit will be calculated on actual years and months of service, identical to retirement benefits under North Dakota Century Code chapter 54-52.

1. Retiree health insurance credit will be subject to reduction factors in the

event of early retirement.

For annuitants of the public employees retirement system defined benefit plan and North Dakota public employees retirement system judges, and for members of the defined contribution retirement plan, excluding national guard retirees, who take a periodic distribution:

<u>Age at Retirement</u>	<u>Reduction Factor</u>	<u>Age at Retirement</u>	<u>Reduction Factor</u>
64 to 65	3%	59 to 60	33%
63 to 64	9%	58 to 59	39%
62 to 63	15%	57 to 58	45%
61 to 62	21%	56 to 57	51%
60 to 61	27%	55 to 56	57%

For annuitants of the job service retirement program: This includes those who retired under a discontinued service annuity but does not include those who retired at a normal or optional date.

<u>Age at Retirement</u>	<u>Reduction Factor</u>	<u>Age at Retirement</u>	<u>Reduction Factor</u>	<u>Age at Retirement</u>	<u>Reduction Factor</u>
64 to 65	3%	59 to 60	33%	54 to 55	63%
63 to 64	9%	58 to 59	39%	53 to 54	69%
62 to 63	15%	57 to 58	45%	52 to 53	75%
61 to 62	21%	56 to 57	51%	51 to 52	81%
60 to 61	27%	55 to 56	57%	50 to 51	87%

For annuitants of the highway patrol fund and national guard security police and firefighters and national guard security police and firefighters who transferred to the defined contribution retirement plan:

<u>Age at Retirement</u>	<u>Reduction Factor</u>
54 to 55	3%
53 to 54	9%
52 to 53	15%
51 to 52	21%
50 to 51	27%

2. Disabled annuitants receiving benefits under subdivision e g of subsection 3 of North Dakota Century Code section 54-52-17, subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11, North Dakota Century Code section 52-11-01, or section 71-02-05-05 will be eligible for full retiree health insurance credit benefits. No age reduction factor will be applied.
3. A surviving spouse eligible to receive benefits under subdivisions ~~b~~ and ~~c~~ a(2), b(2) and b(3) of subsection 6 of North Dakota Century Code section 54-52-17, subdivisions b and c of subsection 6 of North Dakota Century Code section 39-03.1-11, or North Dakota Century Code section 52-11-01

will receive retiree health insurance credit based on the deceased member's years of service without any age reduction applied.

4. A surviving spouse receiving benefits under the provisions of subdivision a or ~~e~~ b or d of subsection 9 of North Dakota Century Code section 54-52-17; subdivisions a, b, and c of subsection 5 of North Dakota Century Code section 27-17-01; subsection 9 of North Dakota Century Code section 39-03.1-11; or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit for the duration benefits are paid, based upon the original annuitant's retirement age.

History: Effective April 1, 1992; amended effective June 1, 1996; July 1, 2000.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

Section 71-08-06-04 is amended as follows:

71-08-06-04. Cost. The cost for purchase of eligible military service in the defined contribution plan may be paid as follows:

- 1 The cost for any required employee contributions to be paid by the member may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under subsection 3, 4, or 5 of section 71-02-03-02.2. If no payments have been made, no credit will be awarded.
2. ~~If the member elects to make installment payments through payroll deduction, then the employer will be required to match the member contribution month by month. Upon completion of the member contributions, the employer will be required to make a final payment of all remaining employer contributions.~~
3. ~~If the member elects to make payments through any method other than payroll deductions, then upon the member completing full payment of the required member contributions, the employer cost will be assessed to the member's most recent participating employer.~~
4. The employer cost will be assessed to the member's most recent participating employer. Upon being billed by the public employees retirement system, the participating employer will have thirty days in which to make payment in full. If, after sixty days, the employer has not made payment in full, a civil penalty of fifty dollars will be assessed, and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.

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

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

Law Implemented: NDCC 54-52.6-09.3, 54-52.6-09.4

Subsection 6 of Section 71-08-07-01 is amended as follows:

71-08-07-01. Additional employer contributions. An employer may elect to provide additional employer contributions to an employee's account in an amount not exceeding the equivalent of a purchase of up to five years of service credit for that employee and the purchase of an employee's unused sick leave that meets the requirements of section 71-08-07-02. Before offering such a program to its employees, an employer must create a program and document it 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 additional employer contributions will not exceed the equivalent of a purchase of service credit 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 15th of the month following the month of the employee's retirement 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 and 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 pertaining to the 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, the employer 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, _____, 2010.

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

Law Implemented: NDCC 54-52.6-09.2