

Section 71-01-02-05 is amended as follows:

71-01-02-05. Petition format.

1. The nomination petition for an active member on the board must include the signatures of at least one hundred active eligible voters, as determined by the current North Dakota public employee retirement system's membership role ~~their social security numbers~~ and their mailing addresses. The nomination petition for the retiree member on the board must include the signature of at least twenty-five persons receiving retirement or deferred vested retirement benefits, as determined by North Dakota public employees retirement system's retirement membership role_s; ~~their social security numbers~~; and their mailing addresses.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

A new section is proposed to chapter 71-01-03:

71-01-03-04. Treatment, payment or operations. The board of the Public Employees Retirement System has determined:

1. That information related to enrollment, participation, benefits or contributions may be shared with participating employers or PERS contractors for purposes of maintaining a members participation and benefits in the PERS programs. Such sharing of information is limited to that information that is necessary to assure a member's participation and benefits are properly handled. All such information remains confidential whether in the possession of PERS, its participating employers or its contractors.
2. That information relating to eligibility for retirement benefits may be shared with the social security administration and such other organizations to insure that the member is still alive and continues to be eligible.
3. That information necessary for the administration and operation of the program may be shared with the PERS attorney and consultants. To the extent such information is shared it remains confidential.

All other requests for information under this section must first be submitted to the executive director and then reviewed by the PERS Board.

History: Effective date of adoption.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-26

The following amendments and additions are proposed to section 71-02-01-01:

8. "Contribution" means the payment into the fund include ~~of nine and twelve hundredths percent as a percentage of the salary of a member, pursuant to North Dakota Century Code sections 54-52-05, 54-52-06-06.3, 54-52-07, and 54-52-1-03.2.~~

9. "Correctional officer" means a person who has completed a correctional officer course approved/certified by the North Dakota department of corrections and rehabilitation and is employed by a correctional facility as defined in the North Dakota Century Code section 12-44.1.

910. "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 chapter 54-52.

~~40~~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 ~~for reemployment within ninety days of discharge under honorable conditions~~ in accordance with the Uniform Service Employment and Reemployment Rights Act.

~~44~~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 unless the leave of absence is due to "interruption of employment."

~~42~~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.

~~43~~14. "Office" means the administrative office of the public employees retirement system.

~~44~~15. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system. For confidentiality purposes, "participating employer" means the person or group of persons with the ultimate authority over personnel decisions within the agency or political subdivision with which the member is employed or the person's or group's official designee.

~~45~~16. "Pay status" means a member is receiving a retirement allowance from the fund.

~~46~~17. "Permanent and total disability" for members of the main retirement system and the national guard/law enforcement retirement plan means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. For members of the judge's retirement plan, "permanent and total disability" is determined pursuant to subdivision e of subsection 3 of section 54-52-17 of the North Dakota Century Code.

~~47~~18. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.

~~48~~19. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.

~~49~~20. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.

~~20~~21. "Regularly funded" means a legislatively authorized full-time equivalent (FTE) position for state agencies. For all governmental units other than state agencies, regularly funded means a similar designation by the unit's governing board which is created through the regular budgeting process and receives traditional employee benefits such as sick leave and annual leave.

~~24~~22. "Retiree" means an individual receiving a monthly retirement allowance pursuant to chapter 54-52.

23. "Retirement allowance" means a reoccurring, periodic benefit from an eligible employer-sponsored retirement plan.

2224. "Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section 71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.

2325. "Substantial gainful activity" is to be based upon the totality of the circumstances including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.

2426. "Termination of employment" means a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence does not constitute termination of employment.

27. "Termination of participation" means termination of eligibility to participate in the retirement plan.

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.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52

The following amendments are proposed to section 71-02-02-01:

71-02-02-01. Membership - General rule. Each eligible employee shall become a member of the public employees retirement system upon filing a membership form with the office, and the beginning of contributions to the fund. In addition, the following requirements apply:

1. A temporary employee must submit a completed participation agreement before becoming a member. Application must be completed within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member for the remainder of the plan year.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.
6. Elected officials of participating counties and elected state officials, at their individual option, must enroll or waive participation in writing within six months of taking office or beginning a new term. If no application is made and filed with the office, an irrevocable waiver of participation will occur until the official makes application within six months from the start of a new term.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-01(3), 54-52-02.9, 54-52-05

71-02-03-01. Service credit - General rule. A member receives credit for each month a contribution is made. Service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for prior service employment as defined in N.D.C.C. § 54-52-01(13). For employees employed prior to July 1, 2004, service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for:

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

The following amendments are proposed:

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

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

1. Verification by the former employer of previous North Dakota or out-of-state public service, or service with the federal government.
2. Documentation of military service by submitting a DD214 or NGB22.
3. Certification of approval by the member's employer of any leave of absence and length of that leave.
4. ~~Verification of current average monthly salary and current service credit by the employer of members participating in an alternative retirement system.~~

5. Statement from employee or former employer that service credit being applied for does not qualify for retirement benefits under another retirement system.

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

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

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

71-02-03-02.2. Payment. The total dollar amount for the purchase or repurchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments ~~are~~ 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 ~~a maximum term of ten years or the number of years until the member meets normal retirement age, whichever is greater~~ as long as the employee is employed by a participating employer.
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 in which the member retires or takes a lump sum refund.
5. Payments are due by the fifteenth of the month to be credited for the month.

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

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

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

71-02-03-02.3. Delinquent payment. If no payment is received within thirty days of the due date, the public employees retirement system shall send a letter to the member advising them of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on closed accounts must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be re-established without a new calculation.

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

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

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

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

1. The member's record must be updated with the additional service credit once the account is paid in full.
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. ~~Fractions of s~~Service credit equal to a fraction are deemed to be a whole month of service credit.~~must be rounded to the nearest whole month.~~

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.

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

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

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

71-02-03-02.5. Costs. If purchasing under 54-52-02.6 or subdivision d of subsection 1 of North Dakota Century Code section 54-52-17.4, the cost will be the higher of the amount refunded to the member plus interest at the actuarial rate of return or the actuarial cost to provide the credit. All other types of service purchases must be actuarially determined. An actuarial cost must be calculated by applying actuarial factors to the amount of retirement and retiree health insurance credit being purchased by the member. The member's current age, average salary, and current credited service on record with the North Dakota public employees retirement system in the month in which the member's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit being purchased must be calculated using the benefit formulas in place at the time the written request is received from the member. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

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

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

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

Upon receipt of the written request from the member, and all required documentation, a written cost confirmation must be prepared and mailed to the member. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter.

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

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

The following amendments are proposed to section 71-02-03-06:

71-02-03-06. Conversion of sick leave. To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member ~~begins employment with the new employer~~ leaves employment with the former employer. One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The employer and employee contributions rates used to calculate the cost must be the rate of the retirement program of the member at termination. ~~The cost to convert unused sick leave into service credit must be paid with aftertax employee contributions.~~

Payments may be accepted from the member as early as six months prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
2. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
- ~~3. The sick leave conversion payment must be within the contribution limits of 26 U.S.C. 415(n) for the purchase of permissive service credit.~~
- 4.3 At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of that date.

If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member within sixty days of termination.

The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.8, 54-52-27

A new section is proposed to chapter 71-02-03

71-02-03-07. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to 5 years of service credit for an employee or purchase an employee's unused sick leave that meets the requirements of NDCC 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 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 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 PERS 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 employee's retirement or 60 days from the date the employer/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 employers authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased or sick leave to be converted, and send such certification to PERS. The employer also agrees that the employers authorized agent will coordinate the program, authorize all purchases in writing to PERS, and be the focal point for communications between PERS, 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 PERS to share confidential information with the employer.
9. The employer certifies that in offering the program, they are making it available to all employees or a specified class of employees on a nondiscriminatory basis.

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 cancelled.

History:

General Authority: 54-52-04

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

A new section is proposed to chapter 71-02-03

71-02-03-08. Eligible sick leave. An employer or a member may only purchase unused sick leave that has not been previously purchased by a former employer or the member. Further, eligible sick leave may not exceed a total of 8 hours times the number of months of permanent employment with the current employer or service in the retirement plan.

History:

General Authority: 54-52-04

Law Implemented: 54-52-27

The following amendments and additions are proposed for section 71-02-04:

71-02-04-01. Retirement benefits - Application. Except as provided in section 71-02-04-02 for retirement options, applications for retirement, surviving spouse, and disability benefits must be filed at the public employees retirement office at least 30 days before the retirement date or before the commencement of benefits. ~~a~~ A member shall file ~~an application~~ a photocopy of their birth certificate, and if a benefit election is an optional benefit under section 71-02-04-04(1)(2), the member must provide a photocopy of the spouse's birth certificate and marriage certificate with the office for retirement benefits at least thirty days before retirement date or before the commencement of retirement benefits. A surviving spouse shall file a photocopy of his/her birth certificate, deceased spouse's birth certificate and certified copy of the death certificate, and marriage certificate if a benefit election is under subsection 6(b) of North Dakota Century Code section 54-54-17.

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

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

Law Implemented: NDCC 54-52-17

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 can 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.
3. A member may not revoke the elected benefit after receiving and cashing the first benefit check, 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.

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

Law Implemented: NDCC 54-52-17

The following amendments are proposed to section 71-02-04-03(3):

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 ~~either of the following ages~~ an age no earlier than 62 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.

The following amendments are proposed for section 71-02-04-07:

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

1. Except for members of the national guard/~~security police and firefighters law enforcement~~ retirement system, 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.
2. For members of the national guard/~~security police and firefighters law enforcement~~ retirement system, 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 the member's early retirement benefit commences.

History: Amended effective September 1, 1982; June 1, 1996; April 1, 2002.

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

Law Implemented: NDCC 54-52-17

The following amendments are proposed to section 71-02-04-09:

71-02-04-09. Dual membership - Receipt of retirement benefits while contributing to the teachers' fund for retirement, the highway patrolmen's retirement system, or the teachers' insurance and annuity association of America-college retirement equities fund.

1. Dual members must select one of the following options:
 - a. Begin receiving retirement benefits from one plan prior to ceasing employment covered by the alternate plan, subject to "termination of employment" or "termination of participation".

- b. Begin receiving retirement benefits from one plan and begin work in a job covered by the alternate plan.
 - c. Continue as a dual member and begin receiving retirement benefits from both plans after ceasing employment.
2. ~~For purposes of determining eligibility for benefits under subsection 2 of North Dakota Century Code section 54-52-17, an employee's years of service credit is the total of the years of service employment earned in the public employees retirement system and the years of service employment earned in:~~
- a. ~~The teachers' fund for retirement.~~
 - b. ~~The highway patrolmen's retirement system.~~
 - c. ~~The teachers' insurance and annuity association of America college retirement equities fund.~~
3. ~~A member's combined service credit must not exceed twelve months per calendar year. If a member's combined months of service is less than twelve months, the member will be credited with a fractional year of service, determined by dividing the combined total by twelve.~~

History: Effective June 1, 1996.

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

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

71-02-04-09.1. Dual membership limitations. The following limitations apply when a member elects an option under subsection 1 of section 71-02-04-09.

- 1. Eligible service credit may be used for vesting purposes and determining when the dual member may begin drawing normal retirement benefits. A member may begin drawing ~~normal~~ retirement benefits from one fund and use the same years, and any additional years, for reaching ~~normal~~ retirement from the alternate fund if the service credit is earned at different times.
- 2. If a dual member elects to receive retirement benefits as provided in subdivision a or b of subsection 1 of section 71-02-04-09, the final average salary, service credit, and member's age used to calculate the benefit that is applicable at the time retirement benefits begin may not be adjusted after the benefit effective date.
- 3. The ~~final average~~ salary used in calculating the retirement benefit must be certified in writing by the ~~fund of last membership~~ alternate retirement system. The final average salary established at the time retirement benefits begin must be fixed for pension calculation purposes. Benefits may not be recalculated using salaries earned after the benefit effective date. Months not employed are excluded for the purpose of computing the final average salary. If a dual member works less than thirty-six months at retirement, the final average salary is the average salary for total months of employment.

History: Effective June 1, 1996.

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

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

The following amendment is proposed to section 71-02-04-11:

71-02-04-11. Erroneous payment of benefits - Underpayments.

1. An "underpayment" means a payment of money by the public employees retirement system that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.
2. If an underpayment occurs, the amount of the lump sum payment must be paid within ~~thirty~~ sixty days of the discovery of the error, with interest at the rate of six percent from the time underpayment occurred.

History: Effective June 1, 1996.

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

Law Implemented: NDCC 39-03.1-25, 54-52-17

The following amendments and additions are proposed to section 71-02-04-13:

71-02-04-13. Reduced benefit option. A participating member may enter into an agreement with the retirement board to receive an actuarially adjusted monthly retirement benefit to accommodate the less than full payment for years of service credit necessary to meet the rule of eighty-five, if the following criteria are met:

1. The participating member is ~~at least fifty-five years old and has twenty or more years of credited service in the retirement system~~ within 72 months of obtaining normal retirement age the rule of 85.
2. The service cannot be purchased, ~~or the sick leave cannot be converted,~~ prior to the participating member drawing a retirement benefit because it would be in violation of 26 U.S.C. 415 or limits of purchasing additional service credit found under North Dakota Century Code section 54-52-17.4 (10).
3. The participating member must have completed all other types of purchases they are eligible for prior to entering into the reduced benefit agreement.
4. The participating member's reduced benefit agreement must indicate a benefit option election. If a benefit election is an optional benefit under section 71-02-04-04(1)(2), the reduced benefit is payable over the lifetime of both the member and surviving spouse.

History: Effective June 1, 1996; amended effective July 1, 1998; April 1, 2002.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 39-03.1-11.1, 54-52-17

The following amendments are proposed for section 71-02-05-03:

71-02-05-03. Cancellation of disability benefit. ~~If a~~ When a member receiving a disability benefit ~~ceases to be eligible for disability benefits prior to the attainment~~ attains of normal retirement age, that member may elect to terminate their disability benefits and is eligible to draw retirement benefits as specified in North Dakota Century Code section 54-52-17.

History: Amended effective January 1, 1992, July 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

The following amendments and additions are proposed for section 71-02-05-06:

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

1. Application.

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

2. Medical consultant.

- a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.

Section 71-02-05-06 (2) (c) is modified as follows:

c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing. Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 are eligible for benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further medical information to the medical adviser, but are subject to recertification requirements specified in this chapter. In determining eligibility for judges not approved pursuant to the above the medical director shall work with a review committee composed of one Supreme Court judge and a district court judge to review the proposed application. In order for the application to be approved it must have the concurrence of the medical director and a least one judge. The Executive Director shall appoint two judges to serve on the review committee.

~~d. (1) If the applicant has terminated employment, the executive director shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the executive director shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.~~

~~(2) If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.~~

3. Medical examination.

a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.

b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports necessary for initial determination of eligibility for benefits. If determined to be eligible for disability benefits, the member must be reimbursed up to four hundred dollars for the cost of medical examinations specifically requested by the medical adviser and the executive director.

4. Appeal.

a. e. If the applicant has terminated employment, the public employees retirement system shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the public employees retirement system shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.

b. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.

c. a. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the ~~plan administrator~~ public employees retirement system mailed the decision.

d. b. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.

e. e. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or

adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.

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

6. Redetermination and recertification.

a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The executive director may waive the necessity for a recertification, based on the recommendation of the medical consultant.

b. The ~~executive director~~ public employees retirement system will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the to the first of the month benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.

c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.

d. The medical consultant will make the recertification decision. The executive director may require additional re-certifications, if the facts warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.

e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.

f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002.

General Authority: NDCC 54-52-17

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

Proposed amendments and additions to section 71-02-05-07 are as follows:

71-02-05-07. Optional benefits. For the main system and national guard/law enforcement retirement plans, An individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. Under no circumstances is an option available if the calculation of the optional benefit to which the member is entitled results in an amount which is less than one hundred dollars.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the 5 first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted.
2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted.
3. **Five-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 five-year or ten-year certain feature, as designated by the member.

History: Effective January 1, 1992; amended effective July 1, 1994.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-07.1. Optional benefits. For the judges' retirement plan, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. Under no circumstances is an option available if the calculation of the optional benefit to which the member is entitled results in an amount which is less than one hundred dollars.

1. One hundred percent joint and survivor benefit. A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits

terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted.

2. **Five-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 five-year or ten-year certain feature, as designated by the member.

History: Effective January 1, 1992; amended effective July 1, 1994.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

The following are proposed amendments to section 71-02-06:

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 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 SFN 2564 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.

General Authority: NDCC 54-52-04

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

71-02-06-06. Employer payment of employee contributions.

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52-05 ~~may not be revoked for the remainder of the biennium shall be reported to the board a minimum of 31 days prior to the effective date. The option choice selected must remain in effect unless a change has been submitted to the board, in writing, by June fifteenth of each odd-numbered year.~~
2. An employer may not discriminate between eligible participating employees as to its contribution under North Dakota Century Code section 54-52-05.

History: Effective July 1, 1994.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05

71-02-06-07. Employer contribution - National guard ~~security officers and firefighters~~/law enforcement. As part of its annual actuarial evaluation, the board shall determine the amount required to support the level of benefits for national guard ~~security officers and firefighters~~ law enforcement specified in North Dakota Century Code section 54-52-17. The board shall set the

employer's contribution rate on a biennial basis, but may adjust that rate if it is actuarially necessary to maintain appropriate funding levels.

History: Effective July 1, 1994.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06.2

Proposed amendments to section 71-02-07 are 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. 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, ~~and~~ salary and service credits, and any benefit increases accrued during the period of subsequent employment.
2. If the period of subsequent employment is more than two years, the member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member's age and salary earned during the period of reemployment 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.
3. If a member dies during subsequent employment, the member's initial retirement benefit election will apply. If a benefit election was an optional benefit under section 71-02-04-04(1)(2), then 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.

History: Amended effective November 1, 1990; July 1, 1998.

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

Law Implemented: NDCC 54-52-17

Proposed amendments and additions to Chapter 71-02-11 are as follows:

CHAPTER 71-02-11
~~VETERANS' REEMPLOYMENT RIGHTS ACT~~
UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

71-02-11-01. Eligibility requirements.

1. To be eligible to receive service credit with North Dakota Public Employees Retirement System for military time under this chapter, a veteran must have had an interruption of ~~the veteran's~~ employment and been discharged under honorable conditions.

History: Effective September 1, 1991
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4(5)

71-02-11-01. Eligibility requirements. To be eligible to receive service credit with North Dakota public employees retirement system for military time under this chapter, a veteran must have had an interruption of the veteran's employment and been discharged under honorable conditions.

History: Effective September 1, 1991.
General Authority: NDCC 54-52-04
Law Implemented: ~~38 USC 2021-2026~~ NDCC 54-52-17.4(5)

71-02-11-02. Award of service credit.

1. An individual with eligible time may receive up to sixty months credit upon proper application ~~for the following time periods~~. A veteran eligible to receive service credit for military time must apply for and purchase that time within the lesser of three times the length of active duty or five years from the date of their return to covered employment, ~~prior to receiving credit for retirement purposes~~. Service credit will not be awarded until all required documentation is received by the North Dakota public employees retirement system, and payment of both the employer and the employee contributions is made in full.
 - a. ~~For periods of time between June 24, 1948, through August 1, 1961, up to four years of credited service for military time may be awarded.~~
 - b. ~~For periods of time after August 1, 1961, up to five years of service credit for military time may be awarded.~~
 - c. ~~Service credit for military time which exceeds the maximums listed above may be awarded if served at the request of the federal government or imposed pursuant to law. The member must provide proof that the extended service was not voluntary.~~
 - d. ~~Purchase maximums will be determined from the documentation provided by the member.~~

History:
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4(5)

71-02-11-03. Documentation requirements. The burden of proof will be on the member for providing documentation necessary to determine what military time is eligible for service credit. At a minimum, the following documentation is required before service credit will be awarded:

1. The member must provide a legible copy of military discharge papers indicating an honorable discharge (DD214, DD215, or NGB22).
2. The member must provide proof of the last day of employment prior to reporting for active duty and the first day of employment following the return from active duty. This information must be certified by the

authorized agent of the employing agency using a "record of previous service" (SFN17028) or notice of change (SFN10766) if returning from leave of absence.

3. The members requesting service credit for extended military terms discussed under subdivision c of subsection 1 of section 71-02-11-02 must provide a legible copy of the appropriate military papers (DD214).
4. Members who elect to purchase military time must submit a completed purchase agreement (SFN17758).

History: Effective September 1, 1991.

General Authority: NDCC 54-52-04

Law Implemented: 54-52-17.4(5)

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. ~~Employee contributions pertaining to the North Dakota public employees retirement system.~~
 - a. ~~June 24, 1948 – June 30, 1966 – Military time which meets the eligibility requirements will be credited to the member's account at no cost.~~
 - b. ~~July 1, 1966, and after – Military time which meets the eligibility requirements must be purchased at a cost of four percent times the monthly salary in the month in which the employee elects to purchase the military service, times the number of months being purchased.~~
 - c. 1. The cost determined above may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under section 71-02-03-02.2(3)(4)(5). 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. ~~Employee contributions pertaining to the North Dakota highway patrolmen's retirement system.~~
 - a. ~~Military time which meets the eligibility requirements must be purchased using the amount appropriate to the date military service was earned as specified below, times the monthly salary in the month in which the employee elects to purchase the military service, times the number of months being purchased.~~

(1) July 1, 1949 – June 30, 1951 3.5%

(2) July 1, 1951 – June 30, 1965 6% not to exceed \$ 18.00

(3) July 1, 1965 – June 30, 1971 6% not to exceed \$ 24.00

(4) July 1, 1971 – June 30, 1975 9% not to exceed \$ 67.50

(5) July 1, 1975 – June 30, 1977 9% not to exceed \$ 76.50

(6) July 1, 1977 – June 30, 1979 9% not to exceed \$112.50

(7) July 1, 1979 – June 30, 1981 9% not to exceed \$135.00

(8) July 1, 1981 – June 30, 1985 7% not to exceed \$133.00

(9) July 1, 1985 to present 10.3%

- b. ~~The cost determined above may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under 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.~~
3. ~~Employer contributions pertaining to the North Dakota public employees retirement system.~~
- a. ~~June 24, 1948 – June 30, 1966 – Military time which meets the eligibility requirements will be credited to the member's account at no cost.~~
- b. ~~July 1, 1966, and after – Military time which meets the eligibility requirements must be purchased at a cost of five and twelve hundredths percent times the monthly salary in the month in which the employee elects to purchase the military service, times the number of months being purchased.~~
- e2. The employer cost, ~~determined above~~, 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.
- D3. ~~In the event the most recent participating employer no longer exists, _____ the board shall review each biennium the outstanding obligation and determine whether sufficient actuarial margins exist to absorb this cost. If sufficient margins do not exist, the board shall seek legislative remedy through an appropriations bill.~~
4. ~~Employer contributions pertaining to the North Dakota highway patrolmen's retirement system.~~
- a. ~~Military time which meets the eligibility requirements must be purchased based on the amount appropriate to the date military service was earned as specified below, times the monthly salary in the month in which the employee elects to purchase the military service, times the number of months being purchased.~~
- (1) ~~July 1, 1949 – June 30, 1951 3.5%~~
(2) ~~July 1, 1951 – June 30, 1965 6% not to exceed \$ 18.00~~
(3) ~~July 1, 1965 – June 30, 1971 One and one fourth of employees contribution~~
(4) ~~July 1, 1971 – June 30, 1975 9% not to exceed \$ 67.50~~
(5) ~~July 1, 1975 – June 30, 1977 9% not to exceed \$ 76.50~~
(6) ~~July 1, 1977 – June 30, 1979 9% not to exceed \$112.50~~
(7) ~~July 1, 1979 – June 30, 1981 9% not to exceed \$135.00~~
(8) ~~July 1, 1981 – June 30, 1985 12% not to exceed \$228.00~~
(9) ~~July 1, 1985 to present 17.70%~~

- ~~b. — The employer cost will be assessed to the North Dakota highway patrol. Upon being billed by the North Dakota public employees retirement system, payment must be received in full within thirty days. 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 payment became due.~~
3. If the employer contributions are paid and the member becomes delinquent for their required employee contributions, then NDPERS 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.

General Authority: NDCC 54-52-04

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

71-02-11-05. Retired members. ~~Retired receiving members of the North Dakota public employees retirement system may be eligible for service as established in section 71-02-11-01. However, the following exceptions apply:~~

1. ~~Cost.~~
 - a. ~~When calculating the cost of purchasing the employee's contribution for military time, the retiree's final average salary will be multiplied by four percent times the months of eligible military time if pertaining to the North Dakota public employees retirement system or as set forth in subdivision a of subsection 2 of section 71-02-11-04 if pertaining to the North Dakota highway patrolmen's retirement system. This amount may be paid as a lump sum, be deducted from the retroactive payment, or a combination of both.~~
 - b. ~~The employer's contribution shall be calculated by multiplying the retiree's final average salary by five and twelve hundredths percent times the months of eligible military time if pertaining to the North Dakota public employees retirement system or as set forth in subdivision a of subsection 4 of section 71-02-11-04 if pertaining to the North Dakota highway patrolmen's retirement system. Payment of the employer contribution shall follow section 71-02-11-04.~~
2. ~~The retiree's monthly benefit amount will be recalculated to reflect the service credit for eligible military time only after the proper application has been completed and payment in full has been received, if applicable. This benefit increase will be applied retroactively. The retroactive payment will be processed and paid to the retiree within twelve months. Interest will not be paid on the retroactive payment.~~
3. ~~A retiree's monthly benefit will only be recalculated if there is an increase in service credit. The North Dakota public employees retirement system will not take away any erroneous service credit that may be discovered in this process.~~

History: Effective September 1, 1991.

General Authority: NDCC 54-52-04

Law Implemented: 38 USC 2021-2026

71-02-11-06. Deceased retirees or members.

1. ~~_____ A deceased retiree or member, for which no benefits are currently being paid to beneficiaries, will not qualify for a retroactive adjustment.~~
2. ~~_____ A beneficiary who is currently receiving public employees retirement system benefits, has the option to apply for service credit for military time on behalf of the deceased retiree or member. The only military time eligible for credited service is military time prior to July 1, 1966. To receive credit for military time, the beneficiary must follow the general eligibility requirements and procedures, as stated in section 71-02-11-02.~~
3. ~~_____ If a retiree or member dies after completing the application requirements for service credit for military time, but prior to receiving a retroactive adjustment, the retroactive payment would be payable to the retiree's stated beneficiary.~~

~~**History:** Effective September 1, 1991.~~

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

~~**Law Implemented:** 38 USC 2021-2026~~

The following amendments and additions are proposed for section 71-03-01:

71-03-01-02. Bid specifications. Bid solicitations will be for:

1. Life insurance.
2. Hospital and medical coverages - fully insured contract.
3. Individual and aggregate stop-loss insurance.
4. Administrative services only.
5. Third party administrators.
6. Dental Insurance.
7. Vision Insurance.
8. Long Term Care Insurance.
69. Other bids will be solicited at the ~~the~~ discretion of the board for the wellness program, cost containment programs, auditing services and such other services as may be determined by the board, from time to time, as necessary for the provision of these types of programs and services under the group insurance program.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-04

The following amendments are proposed to section 71-03-03:

71-03-03-02. Late enrollment. An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment and may be subject to a ~~six~~ twelve-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 October 1, 1986; amended effective June 1, 1996; July 1, 1998.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-05. Special enrollment for certain qualifying events. An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America-college retirement equities fund, or retirees who have accepted a retirement allowance from a participating political subdivision's retirement plan and provide verification of distribution are eligible for coverage with the group health insurance program.

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

- c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
- d. A formerly deferred retiree who received a refund of the retiree's retirement account.
- e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
- f. A surviving spouse of a former employee who received a refund of the employee's retirement account.
- g. A former participating member of the defined contribution retirement program who would not qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that employee was a member of the defined benefit retirement plan, unless eligible under the Consolidated Omnibus Budget Reconciliation Act, and then only for the required duration of eligibility under the Act.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000.

General Authority: NDCC 54-52.1-08

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

71-03-03-08. Continuation of life insurance after retirement. An employee who is enrolled in the group life insurance program may continue the basic and supplemental life insurance coverage upon retirement or disability if the employee is entitled to a retirement allowance from an eligible retirement system by making application and remitting timely payments to the board.

History: Effective October 1, 1986; amended effective June 1, 1996.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-09. Leave without pay. An employee on an approved leave without pay may elect to continue coverage for the periods specified in the plans for life insurance, hospital and medical coverages by paying the full premium to the agency. An eligible employee electing not to continue coverage during a leave of absence is entitled to renew coverage for the first of the month following the month that the employee has returned to work if the employee submits an application for coverage within the first thirty-one days of returning to work. An eligible employee failing to submit an application for coverage within the first thirty-one days of returning to work or eligibility for a special enrollment period, may enroll during the annual open enrollment and may be subject to a ~~six~~ twelve-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 October 1, 1986; amended effective November 1, 1990; June 1, 1996; September 1, 1997; July 1, 1998.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

The following amendments are proposed for section 71-03-05:

71-03-05-03. Late premium for retirees. If the premium is not received by the due date, coverage will be cancelled and a late premium reminder is included in the next month's billing. ~~If the premium is not received by the next due date, a special notice is will be sent by certified mail.~~ The notice advises the retiree that payment in full must be received within 90 days from the due date to reinstate coverage will be canceled retroactively to the last first day of the period month following the last month for which payment was received ~~if payment is not received by the first of the following month.~~

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

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-05-04. Late premium for terminated employees. If the premium due for a terminated employee with continued coverage is not received by the ~~sixteenth due date of the month~~, coverage will be canceled retroactively to the last day of the period for which payment was received following a 30-day grace period from the due date. ~~There is no grace period.~~

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 26.1-36-23

The following amendments are proposed to section 71-03-06:

71-03-06-02. Late enrollment. An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment and may be subject to a six twelve-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.

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

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

The following amendments are proposed to section 71-03-07:

71-03-07-03. Collecting employee contributions. Each employer shall collect any employee contribution due and submit it with any 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 ~~Each employer shall determine the amount of employee contributions, however, the level of contribution~~ must be consistently applied to all eligible employees.

History: Effective June 1, 1996.

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

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

71-03-07-06. Requirements for enrolling temporary employees and paid members of political subdivision boards, commissions, or associations.

Each employer shall inform temporary employees and the paid members of its board, commission, or association of their right to the group insurance plan and the process necessary to enroll. Each employer shall provide each eligible member such forms as necessary to enroll in the group insurance plan. Each employer shall collect any member contribution due and submit it along with any employer contribution to the retirement board each month. The minimum employer contribution will be determined by the retirement board. ~~The board, commission, or association shall determine the amount of employer contribution. The employer contribution may be any amount equal to or less than the amount determined for eligible employees but may not exceed the employer contribution for eligible employees. The political subdivision may not make a contribution for coverage for temporary employees.~~ Each employer shall notify the retirement board when an eligible member is no longer eligible for the group insurance plan. The retirement board shall inform such member of options available for continuation of coverage.

History: Effective June 1, 1996.

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

Law Implemented: NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1

The following deletions are proposed to Article 71-04:

Section-71-04-01-01 Definitions

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" 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 ~~severance~~ termination of employment with the employer as set forth in section 71-02-01 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.

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

The following amendment is proposed to section 71-04-03:

71-04-03-04. Change in beneficiary. The participant may change the primary or contingent beneficiary at any time by ~~completing a participant agreement and delivering the agreement to the retirement board offices contacting their designated provider representative.~~

History: Effective April 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

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 of monthly deferrals. ~~Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05.~~

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

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

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

71-04-03-07. Distribution of assets. Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05 or section 71-04-08-01.

History:

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

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

The following amendments, additions and deletions are proposed for section 71-04-04:

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 listing of primary and contingent beneficiaries.~~ and the provider representative.

History: Effective April 1, 1989; amended effective September 1, 1997.

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 provide 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.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-04-07. Separation from service. The retirement board shall ~~design and provide participants with a benefit selection form to facilitate payment of benefits under the plan.~~

~~The benefit selection forms may allow the participant the ability to select from the various payment options granted by providers, and to determine the starting date of benefit payments 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.

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

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

71-04-04-08. Authorization. The executive director or the executive director's designee is authorized to sign all provider agreements, employer agreements, payroll deduction authorizations, or benefit applications ~~or benefit selection forms~~ that meet the requirements under article 71-04 and under North Dakota Century Code chapter 54-52.2.

History: Effective July 1, 1994.

General Authority: NDCC 54-52.2-03.2

Law Implemented: NDCC 54-52.2-01, 54-52.2-02, 54-52.2-03.22

The following amendments are proposed to chapter 71-04-05:

CHAPTER 71-04-05

~~EMPLOYEE~~ EMPLOYER RESPONSIBILITIES

71-04-05-03. Semiannual ~~Monthly~~ report. The employer shall provide the retirement board with a listing of ~~all employees actively participating in the deferred compensation plan. The listing must be prepared for January first through June thirtieth and July first through December thirty-first and remitted to the retirement board within thirty days after the end of the reporting period to which it relates.~~ The listing must contain the employee's name, social security number, deductions for the previous reporting period, and provider used. deferred compensation deductions for all employees participating in the deferred compensation plan by the 8th of each month. The employer must use the deferred compensation transmittal of deduction form or the approved electronic format.

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

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

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

71-04-05-06. Separation from service notice. The employer shall notify the retirement board within thirty days of an employee's separation from service. The retirement board shall then notify the former employee's provider of the employee separation from service and eligibility for ~~of the~~ payment options under the plan. ~~and have the former employee complete a benefit selection form.~~

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

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

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

The following amendments are proposed to section 71-04-06:

71-04-06-06. Retirement board report. The provider shall deliver semiannual reports to the retirement board detailing the activity of each participant's account. The semiannual report must be delivered within ~~forty-five~~ thirty days of the end of the reporting period 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 semiannual report must include active, inactive, and ~~retired participants~~ 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.

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

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

71-04-06-08. Benefit requests. The provider shall honor all requests for benefit or refund payments made ~~on the retirement board's benefit selection form and signed by the participant and the retirement board's authorized representative~~ upon notification of the employee's separation from service by the retirement board.

History: Effective April 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-06-11. Provider reporting failure - Penalty. Should the provider fail to deliver the required report within a ~~sixty~~ thirty day period beyond the end of ~~a calendar~~ 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 ~~five months of loss of active provider status~~ 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 provider will remain on loss of provider status for a period of twelve months. At the conclusion of the suspension period, the provider may reapply for active status by signing a new administrative agreement.~~ The Retirement Board will then terminate the agreement with the provider.

History: Effective April 1, 1989; amended effective November 1, 1990; July 1, 1994.

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

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

A new chapter is proposed to Article 71-04 as follows:

CHAPTER 71-04-08
QUALIFIED DOMESTIC RELATIONS ORDERS

Section

71-04-08-01	<u>Payment in Accordance with Qualified Domestic Relations Orders</u>
71-04-08-02	<u>Qualified Domestic Relations Orders Procedures</u>

71-04-08-01 Payment in accordance with qualified domestic relations orders. Retirement moneys must be paid in accordance with any qualified domestic relations order issued in compliance with North Dakota Century Code section 54-52.2-03.3

History: Open adoption

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

Law Implemented: NDCC 54-52.2-03.3

71-04-08-02 Qualified domestic relations orders procedures.

1. Upon receipt of a proposed domestic relations order, the executive director shall:
 - a. Send an initial notice to each person named therein, including the member and the alternate payee named in the order, with an explanation of the procedures followed by the fund.
 - b. Order the funds to which the alternate payee would be entitled by direction of the order segregated, if those funds are ascertainable from the proposed order.
 - c. Review the domestic relations order to determine if it is a qualified order as established by the model language format specified by the board.
2. The domestic relations order shall be considered a qualified order when the executive director notifies the parties the order is approved and a certified copy of the court order has been submitted to the PERS office.
3. If the order becomes qualified, the executive director shall:
 - a. Send a notice to all persons named in the order and any representative designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
 - b. Comply with the terms of the order.
 - c. Direct the amount established for an alternate payee, in each plan to which the order applies, be paid in a lump sum within one hundred twenty days of the acceptance

of the qualified domestic relations order or the entry of the order by the court.

4. If the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such an order, the executive director shall send written notification of termination of the review to all parties at least forty-five days prior to the end of the eighteen-month review period. At the end of the eighteen-month review period, the proposed order is deemed to be withdrawn and of no legal effect.
 - a. If a segregated account has been established for an alternate payee, the executive director shall distribute the amounts in the segregated account in the manner required in the absence of an order.
 - b. If determined after the expiration of the eighteen-month period, the order is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Open adoption

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

Law Implemented: NDCC 54-52.2-03.3

A new chapter to Article 71-04 is proposed as follows:

CHAPTER 71-04-09
UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

Section

<u>71-04-09-01</u>	<u>Eligibility Requirements</u>
<u>71-04-09-02</u>	<u>Documentation Requirements</u>
<u>71-04-09-03</u>	<u>Payment</u>
<u>71-04-09-04</u>	<u>Recording of Missed Contributions</u>

71-04-09-01. Eligibility requirements. To be eligible to make up contributions to the 457 deferred compensation plan for missed contributions during military time under this chapter, a veteran must have had an interruption of the veteran's employment and been discharged under honorable conditions.

History:

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

Law Implemented: 54-52.6-09.3

71-04-09-02. Documentation requirements. The burden of proof will be on the member for providing documentation necessary to determine what military time is eligible for make up contributions. At a minimum, the following documentation is required:

1. The member must provide a legible copy of military discharge papers (DD214, DD215 or NGB22).
2. The member must provide proof of the last day of employment prior to reporting for active duty and the first day of employment following the return from active duty. This information must be certified by the authorized agent of the employing agency using a "record of previous service" or notice of change form if returning from leave of absence.
3. Members who elect to contribute missed contributions for military time must submit a completed missed contributions agreement.

History:

General Authority: NDCC 54-52-04

Law Implemented: 38 USC 2021-2026

71-04-09-03. Payment. The payment for missed contributions for eligible military service under the deferred compensation plan may be paid in a lump sum or in installments pursuant to the rules established under section 71-04-05-02.

History:

General Authority: NDCC 54-52.2-04; 54-52.6-04

Law Implemented: NDCC 54-52.6-09.3

71-04-09-04. Recording of Missed Contributions. To determine eligibility for vesting of employer contributions pursuant to NDCC 54-52-11.1, payments for missed contributions during military time under this chapter will be allocated to each month, beginning with the first month of missed contributions. Vested employer contributions will then be calculated pursuant to NDCC 54-52-11.1.

History:

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

Law Implemented: NDCC 54-52.6-09.3

Amendments to section 71-05-02 are proposed as follows:

71-05-02-01.1. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit. A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. During this period, the member's account will be handled in the same manner as all early reduced retirement benefits. Upon receiving a disability determination, interest accrual on the member's account shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches normal retirement age. The disability benefit will be calculated and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

History: Effective

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

Law Implemented: NDCC 39-03.1-11

Proposed amendments and additions to section 71-05-02-02 are as follows:

4. Decision and Appeal.

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

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

6. Redetermination and recertification.

- ~~a. A disabled annuitant's eligibility must be recertified on July first following the second anniversary date of disability retirement. An additional recertification is required on July first five years thereafter. The plan administrator may require additional recertifications, or waive the necessity for a recertification, if the facts warrant this action.~~
- ~~b. The plan administrator will send a recertification form to the disabled annuitant to be completed and sent back to the fund.~~

~~c. The plan administrator may require the disabled annuitant to be reexamined by a doctor at the annuitant's own expense. The submission of medical reports by the member, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement.~~

~~d. The plan administrator will make the recertification decision and bring the matter to the board only if warranted.~~

~~e. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the plan administrator may do all things necessary to recover the erroneously paid benefits.~~

a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The plan administrator may waive the necessity for a recertification, based on the recommendation of the medical consultant.

b. The plan administrator will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first of the month that benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.

c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the plan administrator.

d. The medical consultant will make the recertification decision. The executive director may require additional recertifications. The decision may be appealed to the board within ninety days of receiving the written recertification decision.

e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The plan administrator shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.

f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

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

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

Law Implemented: NDCC 39-03.1-11

Proposed amendments to section 71-05-02 are as follows:

71-05-02-04. Optional benefits. An individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. These options are not available if the calculation of the optional benefit to which the member is entitled would result in an amount that is less than one hundred dollars.

1. One hundred percent joint and survivor benefit. A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary supplies a marriage certificate and death certificate and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member, the member's benefit must be returned to the ~~single life normal retirement~~ amount. Payment of the ~~single life normal retirement~~ amount must commence on the first day of the month following the spouse's death if written notification of death and provided a death certificate have been submitted.

~~**2. Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death one half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, if the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member, the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death if written notification of death and a death certificate have been submitted.~~

2. Five-year or ten-year certain option. A member may receive the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a five-year or ten-year certain feature, as designated by the member.

History: Effective July 1, 1998.

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

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

71-05-02-06. Cancellation of disability benefit. ~~If a member receiving a disability benefit ceases to be eligible for disability benefits prior to the attainment of normal retirement age, that member is eligible to draw retirement benefits if eligible as specified in North Dakota Century Code section 39-03.1-11.~~

History: Effective date.

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

Law Implemented: NDCC 39-03.1-11

Proposed amendments to section 71-05-04 are as follows:

71-05-04-03. Repurchase of service credit and purchase of additional service credit. To purchase additional credit or repurchase past service, a contributor ~~or participating member of an alternative retirement system~~ must notify the public employees retirement system, in writing, of the service for which the person wishes to receive credit. In addition to the written request, the following information must be submitted, if applicable:

1. Documentation of military service by submitting a DD214 or NGB22.

2. Certification of approval by the member's employer of any leave of absence and length of that leave.

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

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

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

~~**71-05-04-03.1. Purchase of additional years of service.** A participating member who is a vested, permanent employee is entitled to purchase additional years of service credit to enable the member to qualify for the normal retirement date defined by North Dakota Century Code section 39-03.1-11. The years of service purchased must be added to the years of service employment under subsection 4 of North Dakota Century Code section 39-03.1-11 for calculating the service benefit.~~

History: Effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-08.2, 39-03.1-10.1

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 are 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 a maximum term of ten years or the number of years until the contributor meets normal retirement age, whichever is greater, as long as the member is employed by the participating employer.
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 in which the contributor's last retirement contribution is received.

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

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

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

71-05-04-04.1. Costs. The cost to repurchase service credit must be calculated by applying actuarial factors to the amount of the retirement and retiree health insurance credit being purchased by the contributor or member of an alternative retirement system. The contributor's current age, average salary as calculated under subsection 2 of North Dakota Century Code section 39-03.1-11, and current credited service on record with the North Dakota public employees retirement system in the month in which the contributor's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit benefits being purchased must be calculated using the benefit formulas in place at the time the

written request is received from the contributor. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

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

Upon receipt of the written request from the contributor ~~or member of an alternative retirement system~~, a written cost confirmation must be prepared and mailed to the individual. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter.

History: Effective June 1, 1996.

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

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

71-05-04-05. Delinquent payment. If a payment to be made pursuant to section 71-05-04-04 is not received within thirty days of the due date, the public employees retirement system shall send a letter to the contributor or member of an alternative retirement system advising the person of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on a closed account must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be re-established without a new calculation.

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

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

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

71-05-04-06. Crediting purchased or repurchased service. 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.
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. Fractions of service credit equal to a fraction are deemed to be a whole month of service credit. ~~credit must be rounded to the nearest whole month.~~

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

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

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

71-05-04-08. Conversion of sick leave. To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public

employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer.

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

Payments may be accepted from the member as early as six months prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
2. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
3. ~~The sick leave conversion payment must be within the contribution limits of 26 U.S.C. 415(n) for the purchase of permissive service credit.~~
4. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave, confirmed by the member's employer, and the member's final average salary as of that date.
54. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member within sixty days of termination.
65. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-30

A new section is proposed to chapter 71-05-04:

71-05-04-09. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to 5 years of service credit for an employee or purchase an employee's unused sick leave that meets the requirements of NDAC 71-02-03-08. Before offering such 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 chief executive officer governing authority of the employer shall also submit to the executive director of 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 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 PERS 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 employee's retirement or 60 days from the date the employer/employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased ~~or sick leave to be converted~~, and send such certification to PERS. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to PERS, and be the focal point for communications between PERS, 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 PERS to share confidential information with the employer.
9. The employer certifies that in offering the program, they are making it available to all employees or a specified class of employees on a nondiscriminatory basis.

When an employer files the above letter with the Public Employees Retirement System, they it may offer the program to its employees. An employer may terminate this program at any time upon the chief executive officer 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 cancelled.

History:

General Authority: 39-03.1-06

Law Implemented: 39-03.1-10.2

Proposed amendments to section 71-05-05 are as follows:

71-05-05-01. Normal and early retirement benefits - Application. Except as provided in section 71-05-05-02 for retirement options, applications for retirement, surviving spouse, and disability benefits must be filed at the public employees retirement system at least 30 days before normal or early retirement date or before the commencement of benefits ~~a member shall file an application with the office for normal or early retirement benefits at least thirty days before normal retirement date or before the commencement of early retirement.~~ A member shall file a photocopy of their birth certificate, and if member is married a photocopy of spouse's birth certificate and marriage certificate. A surviving spouse shall file a photocopy of birth certificate, deceased member's birth certificate, and marriage certificate a benefit election is under subsection 6 of North Dakota Century Code section 39-03.77.

History: Effective October 1, 1991.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

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 can be filed later than thirty days if approved by the plan administrator upon receiving sufficient evidence that the application was delayed by the member's employer.

71-05-05-08. Retirement - Dual membership. If a member elects to begin drawing monthly benefits while continuing to participate in the public employees retirement system, or teachers' fund for retirement, or the teachers insurance and annuity association college retirement equities fund, the provisions of section 71-02-04-09 must apply.

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

General Authority: NDCC 39-03.1-14.1(1)(c)

Law Implemented: NDCC 39-03.1-14.1

71-05-05-11. Erroneous payment of benefits - Underpayments.

1. An "underpayment" means a payment of money by the public employees retirement system that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.

2. If an underpayment occurs, the amount of the lump sum payment must be paid within ~~thirty~~ sixty days of the discovery of the error, with interest at the rate of six percent from the time underpayment occurred.

History: Effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-25

Proposed amendments to section 71-05-07 are 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, ~~and~~ salary and service credits, and any benefit increases accrued during the period of subsequent employment.

2. If the period of subsequent employment is more than two years, the member's benefit must be based on the benefit provisions in effect at final retirement and shall include the member's age and salary earned during the period of reemployment 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.

3. If a member dies during subsequent employment, the member's initial retirement benefit election will apply. If the benefit election was an optional benefit under section 71-05-02-04, than 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.

History: Effective October 1, 1991.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

Proposed additions to Chapter 71-06-01 are as follows:

71-06-01-06.1 Retroactive payment of the retiree health insurance credit.

Retroactive payments will be as reflected in Chapter 71-02-04 and 71-02-05.

Retroactive payments will be made to the date the member was eligible for the disability benefits, in coordination with the first month the member was responsible for payment of the public employees retirement system group health insurance.

The date of eligibility for the retiree health insurance credit will be determined:

- 1) For deceased, active member's surviving spouse's when the application for retirement benefits is received.
- 2) For deceased retiree's surviving spouse's eligibility for the retiree health insurance credit is applied the first of the month following member's date of death.

History:

General Authority: 54-52-04

Law Implemented: 54-52.1-03.3

Proposed amendments and additions to section 71-07-01 are as follows:

71-07-01-02. Summary plan document. The retirement board shall, upon request of the employee, provide make available a descriptive booklet setting forth the enrollment requirements of the plan and explanation of the pretax benefits program under section 125 of the Internal Revenue Code. executive director must annually prepare a summary plan document. Each employee participating in the pretax benefits program must be given a summary plan document.

History: Effective April 1, 1992

General Authority: NDCC 54-52-04

Law Implemented: 54-52.3-02

Two new chapters are proposed to Article 71-08

Chapter

71-08-01 Election and Transfer

71-08-02 Membership in Defined Contribution Retirement Plan

71-08-03 Disability

71-08-04 Qualified Domestic Relations Orders

71-08-05 Review Procedure

71-08-06 UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

71-08-07 Additional Contributions

CHAPTER 71-08-06
UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

Section

<u>71-08-06-01</u>	<u>Eligibility Requirements</u>
<u>71-08-06-02</u>	<u>Award of Service Credit</u>
<u>71-08-06-03</u>	<u>Documentation Requirements</u>
<u>71-08-06-04</u>	<u>Payment</u>
<u>71-08-06-05</u>	<u>Refund of Overpayments</u>

71-08-06-01. Eligibility requirements. To be eligible to receive service credit with the defined contribution plan for military time under this chapter, a veteran must have had an interruption of the veteran's employment and been discharged under honorable conditions.

History:

General Authority: NDCC 54-52.6-04; 54-52-02

Law Implemented: NDCC 54-52.6-09.3

71-08-06-02. Award of service credit. An individual with eligible time may receive up to sixty months credit upon proper application. A veteran eligible to receive service credit for military time must apply for and purchase that time within the lesser of three times the length of active duty or five years from the date of their return to covered employment after an honorable discharge. Service credit will not be awarded until all required documentation is received by the North Dakota public employees retirement system, and payment of both the employer and the employee contributions is made in full.

History:

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

Law Implemented: NDCC 54-52.6-09.3

71-08-06-03. Documentation requirements. The burden of proof will be on the member for providing documentation necessary to determine what military time is eligible for service credit. At a minimum, the following documentation is required before service credit will be awarded:

1. The member must provide a legible copy of military discharge papers indicating an honorable discharge (DD214, DD215, or NGB22).
2. The member must provide proof of the last day of employment prior to reporting for active duty and the first day of employment following the return from active duty. This information must be certified by the authorized agent of the employing agency using a "record of previous service" or notice of change if returning from leave of absence.
3. The members requesting service credit for extended military terms discussed under subdivision c of subsection 1 of section 71-02-11-02 must provide a legible copy of the appropriate military papers (DD214).

4. Members who elect to purchase military time must submit a completed purchase agreement.

History:

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

Law Implemented: NDCC 54-52.6-09.3

71-08-06-04. Payment. The payment for purchase of eligible military service in the defined contribution plan can be as follows:

1. Payment may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under section 71-02-03-02.2(3)(4)(5). If no payments have been made, no credit will be awarded.
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 their required employee contributions, then NDPERS 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:

General Authority: NDCC 54-52.04; 54-52.6-04

Law Implemented: NDCC 54-52.6-09.3

71-08-06-05. Refund of overpayments. In the event an employee purchased military service pursuant to North Dakota Century Code section 54-52.6, at a cost higher than determined above, overpayments may be refunded. Upon verification that the previously purchased military service meets the general eligibility requirements under section 71-08-06-01, a refund may be issued according to the following guidelines:

1. For a purchase paid in a lump sum:
 - a. If eligible military time was July 1966 or after, five and twelve-hundredths percent times the salary which purchase was computed on, times months of eligible military time, will be refunded.
 - b. Interest on the refund amount will be paid at an annual rate of seven and five-tenths percent compounded monthly. Interest will be calculated from the month the public employees retirement system received the lump sum payment to the month in which the refund is made.
 - c. The refund will be calculated and issued within one hundred eighty days of receiving all necessary documentation.
2. For a purchase paid in installments:

- a. If employee is currently making installment payments, the purchase amount will be recalculated using four percent of salary times eligible months of military time being purchased. Any excess funds resulting from the recalculation will be applied towards the outstanding amount due. Should the payments made to date exceed the new contract amount, a refund of the difference will be issued within one hundred eighty days.
- b. If an eligible employee or retiree has paid the installment contract in full, the purchase amount will be recalculated using four percent of salary times eligible months of military time being purchased. A refund of the difference between the payments actually made and what the payments should have been on the new contract amount will be made within one hundred eighty days of receiving the necessary documentation. Interest on the refund amount will be calculated at an annual rate of seven and five-tenths percent, compounded monthly, from the month in which the purchase was paid in full to the month in which the refund is issued.

History:

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

Law Implemented: NDCC 54-52.6-09.3

CHAPTER 71-08-07
Additional Contributions

Section

71-08-07-01

Additional Employer Contributions

71-08-07-02

Eligible Sick Leave

71-08-07-01. Additional employer contributions. An employer may elect to provide additional employer contributions to an employees account in an amount not exceed the equivalent of a purchase of up to 5 years of service credit for that employee or the purchase an employee's unused sick leave that meets the requirements of NDAC 71-08-06-02. 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 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 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 purchases of service credit as determined by PERS 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 employee's retirement or 60 days from the date the employer/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 employers authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased or sick leave to be converted, and send such certification to PERS. The employer also agrees that the employers authorized agent will coordinate the program, authorize all purchases in writing to PERS, and be the focal point for communications between PERS, 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 PERS to share confidential information with the employer.
 9. The employer certifies that in offering the program, they are making it available to all employees or a specified class of employees on a nondiscriminatory basis.

When an employer files the above letter with the Public Employees Retirement System, they 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 cancelled.

History:

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

Law Implemented: NDCC 54-52.6-09.2

71-08-07-02. Eligible sick leave. An employer may provide additional contributions equal to the purchase of an employees unused sick leave only to the extent that it has not been previously purchased by a former employer or the member. Further, eligible sick leave may not exceed a total of 8 hours times the number of months of permanent employment with the current employer or service in the retirement plan.

History:

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

Law Implemented: NDCC 54-52.6-09.2