

CHAPTER 71-02-02 MEMBERSHIP

Section

71-02-02-01	Membership - General Rule
71-02-02-02	Nonstate Elected Officials - Membership and Return to Service

71-02-02-01. Membership - General rule.

If an eligible employee becomes a member of the public employees retirement system, the following requirements apply:

1. A temporary employee shall submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation must occur for as long as the employee is in temporary status.
2. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, must result in termination of eligibility to participate as a temporary member.
3. Upon taking a refund, future participation as a temporary member is waived.
4. A member may not contribute concurrently to the plan within any given month as both a permanent and a temporary member. Permanent employment has precedence.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998; May 1, 2004; July 1, 2006; April 1, 2016; July 1, 2018; April 1, 2022; July 31, 2025; January 1, 2026.

General Authority: NDCC 54-52-04, 54-52-23

Law Implemented: NDCC 54-52-01, 54-52-02.9, 54-52-05, 54-52-23

71-02-02-02. Nonstate elected officials - Membership and return to service.

1. Purpose. North Dakota Century Code sections 54-52-02.11 and 54-52.6-02.1 conflict with Internal Revenue Code sections 401(a)(36) and 401(k)(4)(B)(ii) and related regulations and relevant guidance.

Pursuant to the authority granted to the board under North Dakota Century Code section 54-52-23, the purpose of this section is to ensure compliance with federal statutes and rules until the conflict between North Dakota Century Code section 54-52-02.11 and federal law is addressed by the legislative assembly.

2. Membership.
 - a. As used in this subsection, "eligible elected official" means a county elected official who is a permanent employee, peace officer, firefighter, dispatcher, emergency medical services personnel, or correctional officer and who is eighteen years or more of age.
 - b. Effective May 13, 2025, an eligible elected official of a participating county, from and after the date that individual takes office, shall participate in the defined contribution retirement plan established under North Dakota Century Code chapter 54-52.6, unless at the time of taking office the individual is:
 - (1) Eligible to participate in the public safety plan, in which case the eligible elected official shall participate in the public safety plan under North Dakota Century Code chapter 54-52; or

- (2) A participating or deferred member under North Dakota Century Code chapter 54-52, in which case the eligible elected official shall participate in the defined benefit plan under North Dakota Century Code chapter 54-52.
 - c. Effective May 13, 2025, a county elected official who is not an eligible elected official shall have the same participation options as a temporary employee.
3. Return to service.
- a. As used in this subsection, "impacted member" means a participating member who has reached the member's normal retirement date, returned to service or continued employment as an elected official of the same participating county with which the member was employed at the time the member retired, and is not contributing to the public safety plan, the defined benefit plan, or the defined contribution retirement plan.
 - b. Before August 1, 2027, a request by an impacted member to receive in-service benefit distributions while the impacted member is an elected official of the county of prior employment must be approved.
 - c. Retroactive effective date. This subsection is retroactive to July 1, 2007.
4. Sunset provision. This section must terminate on the effective date of any measure enacted by the legislative assembly providing the necessary amendments to the North Dakota Century Code to ensure compliance with the federal statutes or rules.

History: Effective July 31, 2025; amended effective January 1, 2026.

General Authority: NDCC 54-52-04, 54-52-23

Law Implemented: NDCC 54-52-02.15, 54-52-05