

**CHAPTER 54-52.6**  
**DEFINED CONTRIBUTION RETIREMENT PLAN**

**54-52.6-01. Definition of terms.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the public employees retirement system board.
2. "Deferred member" means a person who elected to receive deferred vested retirement benefits under chapter 54-52.
3. "Eligible employee" means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan.
4. "Employee" means any person employed by the state, whose compensation is paid out of state funds, or funds controlled or administered by the state or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means the state of North Dakota.
6. "Participating member" means an eligible employee who elects to participate in the defined contribution retirement plan established under this chapter.
7. "Permanent employee" means a state employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.
8. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

**54-52.6-02. Election.**

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after

September 30, 2001, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's re-employment and ending upon the expiration of six months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.
3. An eligible employee who elects to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board who is eligible to participate in an alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the

new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.
6. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.
7. A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.

#### **54-52.6-03. Transfer of accumulated fund balances.**

For an individual who elects to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the

amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

1. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or
2. The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

The board shall calculate the amount to be transferred for persons employed after September 30, 2001, using only the formula contained in subsection 2.

#### **54-52.6-03.1. Changes to election.**

1. In this section the term "participating member" is limited in application to a participating member who elected to participate in the defined contribution retirement plan established under this chapter as an active employee of a participating employer, is an actively participating member of the defined contribution plan as of July 1, 2015, and is an active employee with a participating employer on the date an election is made under this section. The term does not include a participant who is not actively employed with a participating employer on the date of transfer of the funds under this section, has taken a distribution from the defined contribution plan, is retired, is no longer actively employed with a participating employer, or who is a member who has a qualified domestic relations order or other court order on the member's account.
2. Notwithstanding any other provision of law, the board shall provide an opportunity for each participating member to elect in writing to terminate membership in the defined contribution retirement plan under this chapter and to elect to become a participating member in the public employees retirement system under chapter 54-52.
3. The board shall establish a three-calendar-month election period beginning not later than February 1, 2016. A participating member who does not make a written election or who does not file the election with the North Dakota public employees retirement system office during the period specified in this section continues to be a member of the defined contribution plan. A participating member who makes and files a written election with the North Dakota public employees retirement system office under this section ceases to be a member of the defined contribution plan upon receipt by the public employees retirement system of the accumulated fund balance of the member's defined contribution plan under this chapter and waives all rights to that employee's accumulated fund balance under the defined contribution plan. If the executive director of the North Dakota public employees retirement system determines a participating member was not adequately notified of the option to make an election under this section, the executive director may provide that participating member a reasonable time, not to exceed three months, within which to make that election.
4. The public employees retirement system shall credit the transferring employee with the service credit and salary history reflected on the public employees retirement system's electronic database.
5. The board shall determine the method by which a participating member may make a written election under this section. If the participating member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the executive director of the North Dakota public employees retirement system may waive this spousal signature requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
6. For a participating member who elects to terminate membership in the defined contribution plan under this section, the board shall transfer that member's accumulated fund balance, less any rollovers from other plans made into the defined contribution plan, to the public employees retirement system under chapter 54-52. If

funds are transferred from the defined contribution plan to the defined benefit plan under an election made under this section, the board shall record this transfer to the defined benefit plan as employee and employer contributions in the same manner as transferred by the defined contribution provider. If a participating member has a separate account attributable to rollover contributions to the defined contribution plan pursuant to section 54-52.6-09.1, the participating member shall make an election to receive a distribution of the entire amount held in the rollover account at the time of transfer.

7. A participating member who elects a transfer under this section is entitled to vested employer contribution amounts under section 54-52-11.1 prospectively from the date of transfer. A participating member who elects a transfer under this section must be assessed and required to pay monthly to the defined benefit plan an additional employee contribution of an additional two percent of the monthly salary or wages paid to the member.

#### **54-52.6-04. Administration.**

The board shall administer the defined contribution retirement plan established under this chapter and the board or vendors contracted for by the board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan. The board has the exclusive authority and responsibility to employ or contract with personnel and for services that the board determines necessary for the proper administration of and investment of assets of the plan, including managerial, professional, legal, clerical, technical, and administrative personnel or services.

#### **54-52.6-05. Direction of investments.**

Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board.

#### **54-52.6-06. Administrative expenses - Continuing appropriation.**

Participating members shall pay the administrative expenses of the plan in a manner determined by the board. The board, or vendors contracted for by the board, may charge reasonable administrative expenses and deduct those expenses from a participating member's account in the defined contribution retirement plan established under this chapter. The board may also pay the administrative expenses of the plan from fines and fees collected from vendors in a manner determined by the board. The board shall place vendor fines and fees and any money deducted from participating members' accounts in an administrative expenses account with the state treasurer. The board may use funds from the payroll clearing account established pursuant to section 54-52.3-03 to pay for consulting expenses. All moneys in the payroll clearing account, not otherwise appropriated, or so much of the moneys as may be necessary, are appropriated to the board on a continuing basis for the purpose of retaining a consultant as required for the administration of this chapter.

#### **54-52.6-07. Participation in other plans.**

A participating member may not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. However, this section does not prohibit a participating member from participating in a retirement plan established by this state or other public sector employer under the federal Internal Revenue Code.

#### **54-52.6-08. Credit of transfers.**

The board shall promptly credit the plan account of a participating member who makes an election under this chapter to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

**54-52.6-09. Contributions - Penalty.**

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. For members first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.
3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

**54-52.6-09.1. Acceptance of rollovers.**

The plan may allow a participating member to transfer or rollover funds from other qualified plans into the member's account under rules adopted by the board.

#### **54-52.6-09.2. Additional employer contributions.**

Additional lump sum contributions by an employer to a participating member's defined contribution retirement plan account may be made if the participating member has not retired and has not received a retirement benefit under this chapter. Contributions may be made in an amount actuarially equivalent to the amounts determined pursuant to chapter 54-52 as follows:

1. For the conversion of sick leave pursuant to section 54-52-27 if the participating member has four or more years of service.
2. The equivalent of up to five years of service credit unrelated to any other eligible service as provided in subsection 5 of section 54-52-29 if the participating member has twenty-five or more years of service.

#### **54-52.6-09.3. Contributions for military service.**

Repealed by S.L. 2005, ch. 531, § 20.

#### **54-52.6-09.4. Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.**

A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Effective for years after December 31, 2008, compensation for purposes of Internal Revenue Code section 415 [26 U.S.C. 415], as amended, includes military differential wage payments, as defined in Internal Revenue Code section 3401(h) [26 U.S.C. 3401(h)], as amended. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service. After December 31, 2006, if a participating member dies while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code [26 U.S.C. 414(u)(5)], as amended, the deceased member's beneficiaries are entitled to any death benefits, other than credit for years of service for purposes of benefits, which would have been provided under the plan if the participating member had resumed employment and then terminated employment on account of death. The period of that member's qualified military service is treated as vesting service under the plan.

#### **54-52.6-10. Vesting.**

A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:

1. Upon completion of two years of service, fifty percent.
2. Upon completion of three years of service, seventy-five percent.
3. Upon completion of four years of service, one hundred percent.

A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan pursuant to this chapter must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting

vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

**54-52.6-11. Refund beneficiaries.**

A participating or former participating member may nominate one or more individuals as a refund beneficiary by filing written notice of nomination with the board. If the participating member or former participating member is married at the time of the nomination and the participant's spouse is not the refund beneficiary for one hundred percent of the account, the nomination is not effective unless the nomination is signed by the participant's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

**54-52.6-12. Qualified domestic relations orders.**

1. The board or a vendor contracted for by the board shall apportion a participating member's account in the defined contribution retirement plan under this chapter in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules adopted by the board for determining the qualified status of domestic relations orders, administering distributions, and apportioning accounts under the qualified orders. Upon determination of the domestic relations order as qualified, the board shall notify the participating member, the named alternate payee, and the vendor, if applicable, of its receipt of the qualified domestic relations order.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of a participating member's account in the defined contribution retirement plan under this chapter. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise allowed under this chapter. However, a qualified domestic relations order may require distribution from an account in the defined contribution retirement plan under this chapter notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must specify:
  - a. The name and last-known mailing address of the participating member and the name and the mailing address of each alternate payee covered by the order;
  - b. The amount or percentage of the participating member's account to be paid to each alternate payee;
  - c. The number of payments or period to which the order applies; and
  - d. Each retirement plan to which the order applies.

**54-52.6-13. Distributions.**

1. A participating member is eligible to receive distribution of that person's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's refund beneficiary, if any, as provided in this subsection. If the deceased participant designated an alternate refund beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages



designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subdivision d of subsection 3.

3. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:
  - a. A lump sum distribution to the recipient.
  - b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
  - c. Periodic distributions, as authorized by the board.
  - d. No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in subdivisions a, b, or c if the surviving spouse is the sole refund beneficiary. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than one thousand dollars, the board shall automatically refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

#### **54-52.6-14. Disability benefits.**

The board shall allow distribution of the participating member's vested account balance if the board determines that the participating member has become totally and permanently disabled. If approved, the disabled member has the same distribution options as provided in subdivisions a and c of subsection 3 of section 54-52.6-13. However, if the member chooses the periodic distribution option, the member may only receive distributions for as long as the disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board shall discontinue the disability retirement benefit.

#### **54-52.6-15. Board to provide information.**

The board shall provide information to employees who are eligible to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

**54-52.6-16. State income tax deductions.**

For the purposes of state income tax, the assessment imposed by this chapter on the employee must be treated in accordance with existing state statutes on state income tax.

**54-52.6-17. Exemption from state premium tax.**

Premiums, consideration for annuities, and membership fees are exempt from premium taxes payable pursuant to section 26.1-03-17.

**54-52.6-18. Savings clause.**

If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

**54-52.6-19. Overpayments.**

The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member, refund beneficiary, or other person who has a claim to a distribution or any other benefit from a plan governed by this chapter.

**54-52.6-20. Correction of records.**

The board shall correct errors in the records and actions in plans under this chapter and shall seek to recover overpayments and shall seek to collect underpayments.

**54-52.6-21. Internal Revenue Code compliance.**

The board shall administer the plan in compliance with the following sections of the Internal Revenue Code, as amended, as they apply to governmental plans:

1. Section 415, including the defined contribution limitations under section 415(c)(1)(A) and (B) of the Internal Revenue Code and the Treasury Regulations thereunder, which are incorporated herein by reference.
  - a. In accordance with the defined contribution limitations under section 415(c) of the Internal Revenue Code, annual additions (as defined in section 415(c)(2) of the Internal Revenue Code) under this plan may not exceed the limitations set forth in section 415(c)(1)(A) and (B), as adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session.
  - b. If a participating member's aggregate annual additions exceed the defined contribution limitations under section 415(c) of the Internal Revenue Code, the member's annual additions must be reduced to the extent necessary to comply with section 415(c) of the Internal Revenue Code and the Treasury Regulations thereunder.
2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. For a member who attains age seventy and one-half before January 1, 2020, the member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment. For a member who attains age seventy and one-half after December 31, 2019, the member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy-two or terminates employment.

3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).
4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee.
5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded.