



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226
www.ag.nd.gov

October 10, 2013

Mr. John Walstad
Legislative Council
600 E Boulevard Ave
Bismarck, ND 58505

Dear Mr. Walstad:

Please accept this letter in substitution for my letter dated September 10, 2013. I am writing to you on behalf of North Dakota Public Employees Retirement System ("NDPERS") regarding a request to suspend administrative rules due to a change in the law. HB 1452, passed during this last legislative session, contained several provisions that amended or suspended sections of the Defined Contribution plan administered by NDPERS. Specifically, Sections 4, 12 and 14 of HB 1452 amended sections of the North Dakota Century Code applicable to the eligibility and participation requirements of the plan. These amendments will only be effective, however, from October 1, 2013, through July 31, 2017, pursuant to Sections 18 and 19 of the bill. Further, Section 19 of the bill suspended N.D.C.C. § 54-52.6-03 during this same time period.

Upon review of the relevant administrative code provisions, NDPERS staff determined that there were five administrative rules that were affected by these changes because the legal authority that is either referenced within the rule or constitutes the authority for its implementation will be suspended. Due to the fact that the relevant statutory authority was suspended as opposed to repealed by HB 1452; the NDPERS Board at its meeting on July 25, 2013, moved to seek approval from the Administrative Rules Committee to suspend those rules that will be inconsistent with the state law in effect from October 1, 2013, through July 31, 2017. The attached document lists the affected rules as well as the specific basis for the request to suspend.

Based upon our prior discussion it is my understanding that the request of the NDPERS Board may be presented to the Administrative Rules Committee under N.D.C.C. § 28-32-18.1, at its regularly scheduled meeting on December 12, 2013. Once this agenda item is confirmed NDPERS will proceed to provide notice to the regulated community of the time and place of the meeting. Please let me know if you have any

Mr. John Walstad
October 10, 2013
Page 2

questions or if you would like NDPERS to submit additional information relating to this request. Thank you in advance for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Murtha', with a stylized flourish at the end.

Janilyn K. Murtha
Assistant Attorney General

vkk
Enclosure
cc. Sparb Collins

Defined Contribution Rules Table

Article 71-08 Defined Contribution Administrative Rules	Proposed Changes
Chapter 71-08-01 Election and Transfer	Chapter 71-08-01 Election and Transfer
<p>71-08-01-02. Vesting in transferred accumulated fund balance. Vesting in that portion of the accumulated fund balance attributable to the employer's contribution which is transferred from the defined benefit public employees retirement system pursuant to North Dakota Century Code section 54-52.6-03 will follow the same schedule provided in North Dakota Century Code section 54-52.6-10.</p> <p>History: Effective July 1, 2000. General Authority: NDCC 28-32-02(1) Law Implemented: NDCC 54-52.6-03, 54-52.6-10</p>	<p>Suspend from October 1, 2013 through July 31, 2017: Section 19 of HB 1452 (2013) suspends N.D.C.C. § 54-52.6-03 from October 1, 2013, through July 31, 2017.</p>
<p>71-08-01-03. Spousal signature requirements. For purposes of the spousal signature requirements of subsection 4 of North Dakota Century Code section 54-52.6-02 and North Dakota Century Code section 54-52.6-11, extenuating circumstances alleviating the requirement of a spouse's signature are only present if the board determines the spouse is unavailable for the entire election period or the member has a power of attorney over the spouse which would legally allow the member to sign for the spouse.</p> <p>History: Effective July 1, 2000. General Authority: NDCC 28-32-02(1) Law Implemented: NDCC 54-52.6-02(4), 54-52.6-11</p>	<p>Suspend from October 1, 2013 through July 31, 2017: Sections 18 and 19 of HB 1452 (2013) makes the amendments to N.D.C.C. § 54-52.6-02 effective from October 1, 2013, through July 31, 2017. The spousal signature requirements of N.D.C.C. § 54-52.6-02 referenced in this rule are repealed pursuant to this amendment.</p>

<p align="center">Article 71-08 Defined Contribution Administrative Rules</p>	<p align="center">Proposed Changes</p>
<p>71-08-01-05. Transfer amount of persons transferring into eligible employment after December 31, 1999. The amount the board shall transfer for persons beginning or transferring to eligible employment after December 31, 1999, shall equal the actual employer and employee contributions plus interest, as provided in subsection 2 of North Dakota Century Code section 54-52.6-03.</p> <p>History: Effective July 1, 2000. General Authority: NDCC 28-32-02(1) Law Implemented: NDCC 54-52.6-03</p>	<p>Suspend from October 1, 2013 through July 31, 2017: Section 19 of HB 1452 (2013) suspends N.D.C.C. § 54-52.6-03 from October 1, 2013, through July 31, 2017.</p>
<p>Chapter 71-08-02 Membership in Defined Contribution Retirement Plan</p>	<p>Chapter 71-08-02 Membership in Defined Contribution Retirement Plan</p>
<p>71-08-02-01. Membership of individuals who become employees covered under the judges' retirement plan, the highway patrol retirement plan, the law enforcement plan, the teachers' fund for retirement plan, or the alternate retirement plan of the state board of higher education. If a member of the defined contribution retirement plan begins employment in a position covered under the judges' retirement plan, the highway patrol retirement plan, the law enforcement plan, the teachers' fund for retirement plan, or the alternate retirement plan of the state board of higher education, 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</p>	<p>Suspend from October 1, 2013 through July 31, 2017: Sections 18 and 19 of HB 1452 (2013) makes the amendments to N.D.C.C. §§ 54-52-01 and 54-52.6-01 effective from October 1, 2013, through July 31, 2017. Some of the DC plan eligibility requirements referenced in this rule are repealed pursuant to these amendments.</p>

<p align="center">Article 71-08 Defined Contribution Administrative Rules</p>	<p align="center">Proposed Changes</p>
<p>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 is terminated, the member again becomes a member of the defined contribution plan, and the member's account shall resume accepting contributions.</p> <p>The contributions to the alternate retirement plan shall remain with that plan unless at the member's option, the member elects to transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account in the defined contribution retirement plan.</p> <p>History: Effective July 1, 2000; amended effective April 1, 2002; July 1, 2006. General Authority: NDCC 28-32-02(1) Law Implemented: NDCC 54-52.6-01(3)</p>	
<p>71-08-02-02. Continuation of membership. Other than as provided in section 71-08-02-01, a former participating member of the defined contribution retirement plan who returns to state employment following a previous termination or retirement continues to be a member of the defined contribution retirement plan even if the member took one of the distributions allowed by North Dakota Century Code section 54-52.6-13.</p> <p>History: Effective July 1, 2000. General Authority: NDCC 28-32-02(1) Law Implemented: NDCC 54-52.6-02</p>	<p>Suspend from October 1, 2013 through July 31, 2017: Due to reference in rule to proposed suspended rule 71-08-02-01. Further, Sections 18 and 19 of HB 1452 (2013) makes the amendments to N.D.C.C. §§ 54-52-01 and 54-52.6-01 effective from October 1, 2013, through July 31, 2017. Some of the DC plan participation requirements referenced in this rule are repealed pursuant to these amendments.</p>