CHAPTER 52-10
PUBLIC EMPLOYEES UNDER FEDERAL SOCIAL SECURITY

52-10-01. Declaration of policy.

In order to extend to employees of the state and political subdivisions within the state, and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivor insurance system embodied in the Social Security Act [42 U.S.C. 301 et seq.], it is hereby declared the policy of the legislative assembly, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and political subdivisions within the state on as broad a basis as is permitted under the Social Security Act [42 U.S.C. 301 et seq.]. It is the policy also of the legislative assembly that the protection afforded employees in positions covered by a retirement system on the date an agreement under this chapter is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

52-10-02. Definitions.

For the purposes of this chapter:

1. "Employee" includes an officer of a state or political subdivision as well as all persons employed in and by regulatory boards, commissions, or councils recognized and established by the statutes of the state of North Dakota, except part-time elected persons or persons hired on a fee basis, if excluded by the federal-state agreement.
2. "Employer" means the state of North Dakota, and all its political subdivisions, and all of their departments and instrumentalities.
3. "Employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof for such employer, except:
   a. Service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or
   b. Service which under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services.

   Service which under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that chapter [42 U.S.C. 418] must be included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the secretary of health and human services pursuant to subsection 2 of section 52-10-07.
4. "Federal Insurance Contributions Act" means subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954 [26 U.S.C. 3101 et seq.], as such codes have been or may be from time to time amended; and the term "employees tax" means the tax imposed by section 3101 of the Internal Revenue Code of 1954 [26 U.S.C. 3101].
5. "Political subdivision" includes an instrumentality of a state, of one or more of its political subdivisions, or of a state and one or more of its political subdivisions, but only if the instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivisions.
6. "Secretary of health and human services" includes any individual to whom the secretary of health and human services has delegated any of the secretary's functions under the Social Security Act with respect to coverage under such Act of employees of states and their political subdivisions.
7. "Social Security Act" means the Act of the Congress approved August 14, 1935, chapter 531 [49 Stat. 620; 42 U.S.C. 301 et seq.], officially cited as the "Social Security Act", including regulations and requirements pursuant thereto, as the Act has been and may from time to time be amended.
8. "State agency" means the job insurance division of job service North Dakota.
9. "Wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term

does not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that Act.

52-10-03. Federal-state agreement - Interstate instrumentalities.

1. The state agency, with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the secretary of health and human services consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors' insurance system to employees of the state or any political subdivision with respect to services specified in such agreement which constitute "employment" as defined in section 52-10-02. The agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification, and termination of the agreement, administration, and other appropriate provisions as the state agency and the secretary of health and human services shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:
   a. Benefits will be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though such services constituted employment within the meaning of title II of the Social Security Act [42 U.S.C. 401 et seq.].
   b. The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages, as defined in section 52-10-02, equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that Act.
   c. The agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the last day of the sixth calendar year preceding the year in which the agreement is entered into or in which the modification of the agreement making it applicable to such services, is entered into, except that an agreement or modification entered into after December 31, 1955, and prior to January 1, 1960, shall be effective with respect to services performed after December 31, 1955; or after a later date specified in such modification.
   d. All services, which constitute employment as defined in section 52-10-02 and are performed in the employ of the state by employees of the state, shall be covered by the agreement; all services which constitute employment as defined in section 52-10-02 and are performed in the employ of any municipality except elected officials, shall be covered by the agreement, notwithstanding the provisions of section 52-10-05, which provides for plans for coverage of employees.
   e. All services, which constitute employment as defined in section 52-10-02, are performed in the employ of a political subdivision of the state, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under section 52-10-05, shall be covered by the agreement.
   f. The agreement shall include all services described in either subdivision d or e and performed by individuals to whom section 218(c)(3)(C) of the Social Security Act [42 U.S.C. 418] is applicable, and shall provide that the service of any such individual shall continue to be covered by the agreement in case the individual thereafter becomes eligible to be a member of the retirement system.
   g. The agreement shall include all services described in either subdivision d or e and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the secretary of health and human services pursuant to subsection 2 of section 52-10-07.
2. Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states:

a. To enter into an agreement with the secretary of health and human services by which the benefits of the federal old-age and survivors' insurance system shall be extended to employees of such instrumentality;
b. To require its employees to pay, and for that purpose to deduct from their wages, contributions equal to the amounts which they would be required to pay under subsection 1 of section 52-10-04 if they were covered by an agreement made pursuant to subsection 1; and
c. To make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements.

Such agreement, shall, to the extent practicable, be consistent with the terms and provisions of subsection 1 and other provisions of this chapter.

52-10-03.1. Modification of federal-state agreement to exclude certain students.

The state agency, with the approval of the governor, is hereby authorized to modify at any time prior to January 1, 1974, the agreement of December 5, 1955, between the state and the secretary of health, education, and welfare, whereby under section 218 [42 U.S.C. 418] the insurance system established by the Social Security Act was extended to services performed by individuals as employees of the state or any political subdivision thereof, to effect the exclusion of service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

52-10-03.2. Authority of executive director - Social security coverage for national guard employees.

The executive director of job service North Dakota may enter into an agreement with the federal security agency, social security administration bureau of old-age and survivor insurance to provide coverage for national guard state civilian employees under the old-age and survivor insurance provisions of the Social Security Act as provided in section 218 of the Social Security Act amendments of 1950 [Pub. L. 81-734; 64 Stat. 514; 42 U.S.C. 418]. For purposes of the agreement, the executive director may make such collections, contributions, and reports as may be required by the federal agency under the terms of the agreement.

52-10-04. Contributions by employees of the state and of political subdivisions.

1. Every employee of the state or of a political subdivision and every employer is required to pay for the period of such coverage, into the contribution fund established by section 52-10-06, contributions, with respect to wages, as defined in section 52-10-02, equal to the amount of the tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that Act. Such employee's liability shall arise in consideration of the employee's retention in the service of the state or of a political subdivision or the employee's entry upon such service, after the enactment of this chapter.
2. The employee's contribution imposed by this section must be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction does not relieve the employee from liability for such contribution.
3. If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, must be made, without interest, in such manner and at such times as the state agency shall prescribe.

52-10-05. Plans for coverage of employees of political subdivisions.

1. Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of title II of the Social Security Act [42 U.S.C. 401 et seq.], in conformity with applicable provisions of such Act, to employees of such political subdivision. Each such plan and any amendment thereof

must be approved by the state agency if it finds that such plan, or such plan as amended is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan may be approved unless:

a. It is in conformity with the requirements of the Social Security Act and with the agreement entered into under section 52-10-03;
b. It provides that all services which constitute employment as defined in section 52-10-02 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;
c. It specifies the source or sources from which the funds necessary to make the payments required by subdivision a of subsection 3 and by subsection 4 are expected to be derived and contains a reasonable assurance that such sources will be adequate for such purpose;
d. It provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;
e. It provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the secretary of health and human services may from time to time find necessary to assure the correctness and verification of such reports; and
f. It authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

2. The state agency may not finally refuse to approve a plan submitted by a political subdivision under subsection 1, and may not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

3. a. Each political subdivision as to which a plan has been approved under this section shall pay into the social security contribution fund, with respect to wages, as defined in section 52-10-02, at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 52-10-03.
   b. Each political subdivision required to make payments under subdivision a is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this chapter, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to the employee's wages, as defined in section 52-10-02, not exceeding the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that Act, and to deduct the amount of such contribution from the employee's wages as and when paid. Contributions so collected must be paid into the social security contribution fund in partial discharge of the liability of such political subdivision or instrumentality under subdivision a. Failure to deduct such contribution does not relieve the employee or employer of liability therefor.

4. Delinquent payments due under subdivision a of subsection 3 must bear interest at the rate specified in the Social Security Act at 42 U.S.C. 418 and may be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department or agency of the state. In no case may the interest imposed hereby be less than five dollars. In addition, a penalty may be assessed on delinquent reports if such penalty is provided for in the Social Security Act at 42 U.S.C. 418. Any such penalty must be under the terms, conditions,

and in the amounts specified in the Social Security Act. In no case may any penalty imposed hereby be less than five dollars.

5. a. When the state, or any political subdivision as defined in section 52-10-02, is liable for an amount due under an agreement pursuant to this chapter, the state, or such political subdivision shall remain so liable until the secretary of health and human services is satisfied that the amount due has been paid to the secretary of the treasury.
   b. Notwithstanding subdivision a, the state, or any political subdivision as defined in section 52-10-02, is not liable for an amount due under an agreement pursuant to this chapter, with respect to the wages paid to individuals, after the expiration of the latest of the following periods:
      (1) Three years, three months, and fifteen days after the year in which such wages were paid;
      (2) Three years after the date on which such amount became due; or
      (3) Three years, three months, and fifteen days after January 1, 1962,

      unless prior to the expiration of such period the secretary of health and human services makes an assessment of the amount due from the state, or any political subdivision.

52-10-06. Social security contribution fund.

1. There is hereby established a special fund to be known as the social security contribution fund. Such fund must consist of and there must be deposited in such fund:
   a. All contributions, interest, and penalties collected under sections 52-10-04 and 52-10-05;
   b. All moneys appropriated thereto under this chapter;
   c. Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund;
   d. Interest earned upon any moneys in the fund; and
   e. All sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received from the fund from any other source.

   All moneys in the fund must be mingled and undivided. Subject to the provisions of this chapter, the state agency is vested with full power, authority, and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter.
2. The social security contribution fund must be established and held separate and apart from any other funds or moneys of the state and must be used and administered exclusively for the purpose of this chapter. Withdrawals from such fund must be made for, and solely for:
   a. Payment of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under section 52-10-03;
   b. Payment of refunds provided for in subsection 3 of section 52-10-04; and
   c. Refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.
3. From the social security contribution fund the custodian of the fund shall pay to the secretary of the treasury such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 52-10-03 and the Social Security Act.
4. The treasurer of the state of North Dakota is ex officio treasurer and custodian of the social security contribution fund and shall administer such fund in accordance with the provisions of this chapter and the directions of the state agency. All disbursements from such fund except administrative expenses must be made in accordance with such regulations as the state agency may prescribe.
5. a. There are hereby authorized to be appropriated annually to the contribution fund, in addition to the contributions collected and paid into the contribution fund under

sections 52-10-04 and 52-10-05, to be available for the purposes of subsections 2 and 3 until expended, such additional sums as are found to be necessary in order to make the payments to the secretary of the treasury which the state is obligated to make pursuant to an agreement entered into under section 52-10-03.

b. The state agency shall submit to each regular session of the legislative assembly, at least ninety days in advance of the beginning of such session, an estimate of the amounts authorized to be appropriated to the social security contribution fund by subdivision a for the next appropriation period.

52-10-07. Referenda and certification.

1. With respect to employees of any political subdivision who are under a locally administered retirement system, the governor shall authorize a referendum upon request of the governing body of such subdivision; and with respect to employees covered by any other retirement system, the governor may authorize a referendum; and in either case the referendum must be conducted and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act [42 U.S.C. 418], on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act [42 U.S.C. 418] to be given to employees must contain or must be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.
2. Upon receiving evidence satisfactory to the governor that with respect to any such referendum the conditions specified in section 218(d)(3) of the Social Security Act [42 U.S.C. 418] have been met, the governor, or an official designated by the governor to act in the governor's behalf in respect to this subsection, shall so certify to the secretary of health and human services.

52-10-08. Rules and regulations.

The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter. Such regulations must require the employers to make such reports in such form and containing such information as the state agency may from time to time request, and must require employers to comply with such provisions as the state agency or the secretary of health and human services may from time to time find necessary to assure the correctness and verification of such reports.

52-10-09. Studies and reports.

The state agency shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

52-10-10. Identification of enlarged or reorganized public school district - Liability of surviving district.

1. As used in this section, "most populous district" means the public school district involved in annexation or reorganization of school districts:
   a. Which maintained an elementary school;
   b. More than one-half of which is included in the enlarged or reorganized public school district; and
   c. Which had a larger number of children of school age at the school census next preceding the inclusion of such district in the enlarged or reorganized public school district than any other public school district of the type described in

subdivisions a and b which is included in the enlarged or reorganized public school district.

2. For the purposes of this chapter when an enlarged or reorganized school district is formed:
   a. The most populous district must be deemed to be the surviving district for social security purposes.
   b. The enlarged or reorganized public school district shall retain the same identification number which was previously assigned to the most populous district, as defined in subsection 1.
   c. The school districts, or parts thereof, included in the enlarged or reorganized district must be deemed to be annexed to the most populous district, or the part of the most populous district included in the enlarged or reorganized district, and to become identified with it, and the employees of the public school districts included in the enlarged or reorganized district, or if only part of a district is included in the enlarged or reorganized district, the employees who were employed in schools included within the enlarged or reorganized district must be deemed to be employees of the most populous district, which shall succeed the other districts in such enlarged district as a party to their respective contracts of employment.

52-10-11. Systems divided - Referendum on social security.

1. Notwithstanding the provisions of sections 52-10-05 and 52-10-07, with respect to the employees of any political subdivision who are under a locally administered retirement system in existence prior to April 23, 1957, including the North Dakota teachers' insurance and retirement fund for the purposes of this section, the governor is empowered to authorize a referendum for a divided retirement system as provided by section 218 of title II of the Social Security Act [42 U.S.C. 418]. The system must be divided as follows:
   a. Group A of the divided retirement system must be composed of:
      (1) Persons, in positions covered in a locally administered retirement system at the time the political subdivision submits the plan of coverage, who have indicated in accordance with this section that they desire coverage under an agreement under section 218 of title II of the federal Social Security Act [42 U.S.C. 418]; and
      (2) Individuals, including former employees, who become employed in a position covered by a local retirement system after April 23, 1957, and inactive members who become employed in positions covered by a locally administered retirement system after said date.
   b. Group B must be composed of all other persons who are employed in positions covered by a local retirement system at the time referred to in paragraph 1 of subdivision a.
2. Each person who is an actively employed person in a position covered by a local retirement system on the date the political subdivision makes application to the governor for a referendum under this section shall indicate whether the person desires to be a member of group A or group B on a form furnished for that purpose by the state agency and deliver said form to the office of the state agency. An employee who chooses to become a member of group A shall thereby elect to become subject to the laws relating to group A. Each such employee shall enter the employee's mailing address on such form. At the time the state agency certifies to the governor that the plan of coverage required by section 52-10-05 meets the requirements of the law, the state agency shall certify to the governor the names and addresses of the employees of the political subdivision who have indicated their desire to become members of group A.
3. When the state agency has certified to the governor the names and addresses of group A, the governor shall forthwith take all actions necessary for the conduct of a referendum under section 52-10-07 so that members of group A may vote in favor of or

against coverage under the federal old-age and survivors' insurance system. If a majority of the members of group A vote in favor of such coverage, the amendments made and provisions created by this section shall be fully operative. If less than a majority vote in favor of such coverage, such amendments and provisions do not continue in effect and a retirement system must be deemed not to be divided into group A and group B.

4. Employees in positions covered by locally administered retirement plans who have indicated their desire to become members of group B under this section may request a transfer to group A, provided such request is in writing and received by the state agency within the time limit specified in section 218 of title II of the Social Security Act [42 U.S.C. 418].