

EDUCATION

CHAPTER 116

HOUSE BILL NO. 1213

(Representatives Williams, Wall)
(Senator Holmberg)

AN ACT to amend and reenact section 15-10-02 of the North Dakota Century Code, relating to state board of higher education advisers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-02 of the North Dakota Century Code is amended and reenacted as follows:

15-10-02. Membership of state board of higher education - ~~Faculty adviser~~Advisers.

1. The state board of higher education consists of eight members, all of whom must be appointed by the governor in accordance with section 6 of article VIII of the Constitution of North Dakota.
2. The council of college faculties shall annually appoint one individual to serve as an adviser to the state board. The adviser may attend and participate in all meetings of the state board but may not vote.
3. The staff senate annually shall appoint one individual to serve as an adviser to the state board. The adviser may attend and participate in all meetings of the state board but may not vote.

Approved April 4, 2011
Filed April 4, 2011

CHAPTER 117

HOUSE BILL NO. 1035

(Legislative Management)
(Higher Education Committee)

AN ACT to amend and reenact section 15-10-12 of the North Dakota Century Code, relating to the appropriation of higher education institutions' special revenue funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-12 of the North Dakota Century Code is amended and reenacted as follows:

15-10-12. (Effective through June 30, ~~2011~~2013) Board may accept gifts and bequests - Deposit and appropriation of institutional funds.

Subject to the limitations of section 15-10-12.1, the state board of higher education may receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, tuition, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution. The funds in the institution accounts are appropriated on a continuing basis to the state board of higher education. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

(Effective after June 30, ~~2011~~2013) Board may accept gifts and bequests - Deposit of funds. The state board of higher education may, subject to the limitations of section 15-10-12.1, receive donations, gifts, grants, and bequests offered or

tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury and all institutional income from tuition collections must be placed in the special fund for the use of the institution for which the money was raised. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. Moneys in the special revenue fund are subject to legislative appropriations. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution, except that at the close of the biennium the balance of funds not paid from the general fund appropriation must be deposited in the special revenue funds of the institutions. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

Approved April 19, 2011

Filed April 20, 2011

CHAPTER 118

HOUSE BILL NO. 1263

(Representatives Carlson, Dosch, R. Kelsch, Skarphol)

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to the athletic nickname and logo of the university of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

University of North Dakota fighting Sioux nickname and logo.

The intercollegiate athletic teams sponsored by the university of North Dakota shall be known as the university of North Dakota fighting Sioux. Neither the university of North Dakota nor the state board of higher education may take any action to discontinue the use of the fighting Sioux nickname or the fighting Sioux logo in use on January 1, 2011. Any actions taken by the state board of higher education and the university of North Dakota before the effective date of this Act to discontinue the use of the fighting Sioux nickname and logo are preempted by this Act. If the national collegiate athletic association takes any action to penalize the university of North Dakota for using the fighting Sioux nickname or logo, the attorney general shall consider filing a federal antitrust claim against that association.

Approved March 15, 2011

Filed March 15, 2011

CHAPTER 119

SENATE BILL NO. 2323

(Senators Christmann, Hogue, Heckaman)
(Representatives R. Kelsch, Headland, Monson)

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to variance reports for certain construction projects at institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Construction projects at institutions of higher education - Variance reports.

1. Whenever any new construction, renovation, or repair, valued at more than two hundred fifty thousand dollars is underway on the campus of an institution of higher education under the control of the state board of higher education, the board shall provide monthly project variance reports to the director of the office of management and budget. Each report must include:
 - a. The name or a description of the project;
 - b. The expenditure authorized by the legislative assembly;
 - c. The amount of the original contract;
 - d. The amount of any change orders;
 - e. The amount of any potential or anticipated change orders;
 - f. The sum of subdivisions c through e and the amount by which that sum varies from the expenditure authorized by the legislative assembly;
 - g. The total expended for the project to date; and
 - h. The scheduled date of completion as noted in the original contract and the latest available scheduled date of completion.
2. The state board of higher education also shall provide to the director of the office of management and budget, at the same time as the project variance report required by subsection 1:
 - a. A brief description of each change order included in subdivision d of subsection 1; and
 - b. A list of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project.

3. The office of management and budget shall review the information received under this section and provide reports to the budget section of the legislative management upon request.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 120

SENATE BILL NO. 2351

(Senators Schneider, Flakoll)
(Representatives Dahl, Heilman, R. Kelsch, Mock)

AN ACT to create and enact chapter 15-10.3 of the North Dakota Century Code, relating to student fees at institutions of higher education under the control of the state board of higher education; to provide for a legislative management study; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 15-10.3 of the North Dakota Century Code is created and enacted as follows:

15-10.3-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Fee" means any monetary charge, other than tuition, that a student is assessed for a specific purpose or supplemental service.
2. "Tuition" means the monetary charge that a student is assessed in order to be enrolled in a class or program for which a student generally earns academic credit.

15-10.3-02. Mandatory fees - Fees for optional purposes or services - Publication for comparison purposes.

The state board of higher education shall publish on its website in a clear and comprehensible form that allows for ease of comparison among all institutions under its control:

1. The amount of mandatory fees that each institution has determined it shall assess each full-time and part-time student during the ensuing academic year, together with a breakdown of the fees by purpose or service;
2. The amount of any program-specific fees that each institution has determined it shall assess each student in a particular program during the ensuing academic year; and
3. The amount of fees for optional purposes or services that each institution has determined it may assess a full-time or a part-time student during the ensuing academic year, together with a breakdown of the fees by purpose or service.

15-10.3-03. Mandatory fees - Limitation on increases - Exemption.

The total amount of mandatory fees, other than program-specific fees, which an institution under the control of the state board of higher education assesses each full-time and part-time student, may not increase from one academic year to the ensuing academic year by more than one percent of the latest available average

full-time, resident, on-campus, undergraduate tuition rate at that institution, unless the state board determines that an exemption from the requirements of this section is necessitated as a result of:

1. Documented extraordinary circumstances; or
2. Student demand, as evidenced by a campuswide student election or formal action by an institution's student governing board or committee.

15-10.3-04. Mandatory fee increases - Criteria - Explanation.

1. Before the state board of higher education may approve an institution's request to increase a mandatory fee, other than a program-specific fee, the institution shall provide to the board the following information:
 - a. The estimated revenue collection to be generated by the proposed fee increase;
 - b. The specific purpose to which the generated revenue will be allocated;
 - c. Other anticipated tuition and fee increases;
 - d. A delineation of fee increases during the preceding five-year period and the revenues collected as a result of each increase;
 - e. The extent to which students were allowed to participate in the decisionmaking process that preceded and resulted in the request for a fee increase; and
 - f. The approximate number of students that would be assessed the fee each year.
2. The board shall examine the information provided by the requesting institution and shall support its decision to grant or deny a request for a mandatory fee increase with specific reference to each piece of information required by this section.

SECTION 2. STUDENT FEES - LEGISLATIVE MANAGEMENT STUDY. The legislative management shall consider studying, during the 2011-12 interim, the assessment of mandatory fees and fees for optional purposes or services by institutions under the control of the state board of higher education, including the manner in which such fees are determined, identified, and justified and whether the programs, purposes, services, and activities supported by such fees should in fact be supported by tuition dollars, legislative appropriations, or other public or private funding sources. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 3. EXPIRATION DATE. Section 15-10.3-03 is effective through June 30, 2013, and after that date is ineffective.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 121

HOUSE BILL NO. 1105

(Political Subdivisions Committee)
(At the request of the State Board of Higher Education)

AN ACT to repeal section 15-12-11 of the North Dakota Century Code, relating to lists of North Dakota state university publications furnished to county auditors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 15-12-11 of the North Dakota Century Code is repealed.

Approved March 14, 2011
Filed March 14, 2011

CHAPTER 122

SENATE BILL NO. 2289

(Senators Uglem, G. Lee, Schaible)
(Representatives Kilichowski, Mueller, Paur)

AN ACT to amend and reenact section 15-20.1-22 of the North Dakota Century Code, relating to grants for innovations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-20.1-22 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-22. Grants for innovation.

1. ~~The department shall design and implement a program to provide a dollar-for-dollar match to elementary or secondary teachers or schools and to institutions of higher education for the purpose of provide grants to eligible recipients for the funding innovative science, technology, or innovation for students inof:~~
 - a. Science projects or programs;
 - b. Technology projects or programs; and
 - c. Innovation programs for kindergarten through grade twelve. The department shall award the grants on a competitive basis, elementary, or high school students.
2. An eligible recipient for purposes of this section is a teacher, a school, a school district, or an institution of higher education.
3. A grant awarded under this section to an elementary or secondary teacher or school is competitive, may not exceed seven thousand five hundred dollars and a grant awarded to twenty thousand dollars if the recipient is an institution of higher education, and may not exceed twenty five seven thousand five hundred dollars. The in the case of any other recipient.
4. In awarding a grant under this section, the department may require dollar-for-dollar matching funds of a grant recipient may come from a public source, a private source, or any combination of public and private sources. If the department requires matching funds, an eligible recipient may obtain those matching funds from any public or nonpublic source.
5. The department shall consult with the department of commerce in making award determinations under this section.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 123

HOUSE BILL NO. 1092

(Education Committee)

(At the request of the State Board for Career and Technical Education)

AN ACT to create and enact a new subsection to section 15-20.4-02 of the North Dakota Century Code, relating to exemption of certain institutions from regulation by the state board for career and technical education; and to amend and reenact subsection 2 of section 15-20.4-03 and subsections 2 and 12 of section 43-12.1-04 of the North Dakota Century Code, relating to authorization to operate academic or professional postsecondary educational institutions and exemptions from the Nurse Practices Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 15-20.4-02 of the North Dakota Century Code is created and enacted as follows:

Institutions whose only physical presence in this state consists of students enrolled in practicums, internships, clinicals, or student teaching in this state.

SECTION 2. AMENDMENT. Subsection 2 of section 15-20.4-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Prescribe forms and conditions for, receive, investigate as it may deem necessary, and act upon applications for authorization to operate postsecondary educational institutions. Authorization to operate an academic or professional postsecondary educational institution offering educational credentials may be issued only upon approval of the executive officer and the commissioner of the state board of higher education or the commissioner's designee.

⁴³ **SECTION 3. AMENDMENT.** Subsection 2 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. A student practicing nursing as a part of an in-state board-approved nursing education program.

⁴⁴ **SECTION 4. AMENDMENT.** Subsection 12 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

12. ~~Upon written notification to the board by an out-of-state nursing program, a student practicing nursing as a part of a nursing education program preparing for initial or advanced licensure as a registered nurse or licensed practical nurse which is approved by a board of nursing and is located in an institution of higher education that offers transferable credit. A student practicing nursing~~

⁴³ Section 43-12.1-04 was also amended by section 4 of House Bill No. 1092, chapter 123, and section 3 of House Bill No. 1041, chapter 195.

⁴⁴ Section 43-12.1-04 was also amended by section 3 of House Bill No. 1092, chapter 123, and section 3 of House Bill No. 1041, chapter 195.

as part of an out-of-state board-recognized nursing education program, upon written notification to the board and contingent upon clinical site availability.

Approved May 9, 2011
Filed May 10, 2011

CHAPTER 124

HOUSE BILL NO. 1133

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

AN ACT to amend and reenact subsections 2 and 9 of section 15-39.1-04, subsection 4 of section 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-17, and 15-39.1-20 of the North Dakota Century Code, relating to definitions of beneficiary and salary, incorporation of federal law changes, and modification of death and beneficiary provisions under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁵ **SECTION 1. AMENDMENT.** Subsections 2 and 9 of section 15-39.1-04 of the North Dakota Century Code are amended and reenacted are follows:

2. "Beneficiary" means ~~the~~ a person, estate, trust, or organization designated in writing by ~~the member except that in the absence of such designation, if the member is married, the member's spouse must be the primary beneficiary. If the member is married, and if the member wishes to name an alternate beneficiary, the member's spouse must consent in writing to the member's designation. If the member dies without having named a contingent beneficiary to receive any remaining benefits due after the death of the beneficiary, the primary beneficiary may name a contingent beneficiary, a participating member to receive benefits provided by this plan, in receipt of benefits, or otherwise provided under section 15-39.1-17.~~

9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, ~~2009~~2011. "Salary" includes ~~bonus~~ amounts paid to members for performance, retention, experience, and other service-related bonuses of duties, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on August 1, ~~2009~~2011, as adjusted for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1, ~~2009~~2011. A salary maximum is not applicable to members whose participation began before July 1, 1996. "Salary" does not include:
 - a. Fringe benefits or side, nonwage, benefits that accompany or are in addition to a member's employment, including insurance programs, annuities, transportation allowances, housing allowances, meals, lodging, or expense allowances, or other benefits provided by a member's employer.

⁴⁵ Section 15-39.1-04 was also amended by section 1 of House Bill No. 1134, chapter 125.

- b. Insurance programs, including medical, dental, vision, disability, life, long-term care, workforce safety and insurance, or other insurance premiums or benefits.
- c. Payments for unused sick leave, personal leave, vacation leave, or other unused leave.
- d. Early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination.
- e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- f. Amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis.
- g. ~~Recruitment~~ Signing bonuses as defined under section 15.1-09-33.1.
- h. Other benefits or payments not defined in ~~subdivisions a through g of this section~~ which the board determines to be ineligible teachers' fund for retirement salary.

⁴⁶ **SECTION 2. AMENDMENT.** Subsection 4 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- 4. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment of minimum distributions must be made in accordance with section 401(a)(9) of the Internal Revenue Code in effect on August 1, ~~2009~~2011, and the regulations issued under that section, as applicable to governmental plans.

SECTION 3. AMENDMENT. Section 15-39.1-10.6 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-10.6. Benefit limitations.

Benefits with respect to a member participating under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on August 1, ~~2009~~2011, for governmental plans. The maximum dollar benefit applicable under section 415(b)(1)(A) of the Internal Revenue Code must reflect any increases in this amount provided under section 415(d) of the Internal Revenue Code subsequent to August 1, ~~2009~~2011. If a member's benefit is limited by these provisions at the time of retirement or in any subsequent year, the benefit paid in any following calendar year may be increased to reflect all cumulative increases in the maximum dollar limit provided under section 415(d) of the Internal Revenue Code for years after the year payments commenced, but not to more than would have been payable in the absence of the limits under section 415 of the Internal Revenue Code. If an annuitant's benefit is increased by a plan amendment, after the commencement of payments, the member's benefit may not exceed the maximum dollar benefit under section 415(b)(1)

⁴⁶ Section 15-39.1-10 was also amended by section 3 of House Bill No. 1134, chapter 125.

(A) of the Internal Revenue Code, adjusted for the commencement age and form of payment, increased as provided by section 415(d) of the Internal Revenue Code. If this plan must be aggregated with another plan to determine the effect of section 415 of the Internal Revenue Code on a member's benefit, and if the benefit must be reduced to comply with section 415 of the Internal Revenue Code, then the reduction must be made pro rata between the two plans, in proportion to the member's service in each plan.

SECTION 4. AMENDMENT. Section 15-39.1-17 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-17. Death of member.

1. ~~If the death of a member who has not acquired a vested interest should occur prior to retirement, a refund of the member's assessments accumulated with interest must be made to the member's beneficiary, or, if there is no beneficiary, the same must be paid to the surviving children, or if none, to the member's estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to the heirs at law who file claim with the fund within one hundred fifty days of the death of the member.~~
2. ~~If the death of a member who has acquired a vested interest should occur prior to retirement, then the member's beneficiary may apply for a refund of the member's assessments accumulated with interest. If there is no beneficiary, then the same must be paid to the surviving children, or if none, to the member's estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to the heirs at law who file claim with the fund within one hundred fifty days of the death of the member. In lieu of a refund, the beneficiary may elect either to receive a monthly annuity in accordance with option one under section 15-39.1-16, with the amount of the annuity being determined as though the deceased member had retired under the option on the day benefits commence to the beneficiary; or the beneficiary may elect to receive for sixty months an amount equal to the monthly annuity the member would have received if the member had attained age sixty five and retired, based on the member's credited service to date of death. If any member under this section has not paid into the fund assessments equal to the amounts required to be paid under section 15-39.1-09, the applicant shall pay any deficiency into the fund before receiving the annuity.~~
3. ~~If a member who has received annuity payments other than a reduced retirement allowance as provided in section 15-39.1-16 dies prior to receiving accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest, or a member who has elected a reduced retirement allowance under option one or two in section 15-39.1-16 dies and the person who was nominated to receive that member's reduced allowance also dies prior to receiving, together, accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest, the member's beneficiary shall receive a final payment equal to the assessments the member paid to the fund plus interest as provided in section 15-39.1-20 less the amount of the annuity payments made. A member may designate a beneficiary to receive death benefits under the plan when the member dies. If the member is not married, the member may designate a person, estate, or organization as primary beneficiary to receive death benefits. If the member is married, the spouse of the member is the member's primary beneficiary~~

unless the spouse consents in writing to the member's alternate primary beneficiary designation. A member also may designate contingent beneficiaries who are entitled to any remaining death benefits if the primary beneficiary dies before receiving all death benefits provided by this plan. If a member dies without naming a contingent beneficiary, the primary beneficiary may name a contingent beneficiary. If there is no named primary or contingent beneficiary, any death benefits will be paid to the estate.

2. If a member has named more than one primary beneficiary, the board shall pay any death benefits to the primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If no primary beneficiaries remain, any death benefits must be paid to the contingent beneficiaries in the same manner.
 - a. If before retiring a nonvested member dies, the plan shall pay the member's account value to the member's beneficiary.
 - b. If before retiring a vested member dies, the member's beneficiary may select a form of payment as follows:
 - (1) If the member dies and was eligible for unreduced retirement benefits and if the beneficiary is one person, the beneficiary may select:
 - (a) A lump sum payment of the member's account value; or
 - (b) A lifetime monthly annuity effective on the first of the month following the month of the member's death. The amount of the monthly annuity is equal to an amount that would have been paid to the beneficiary under a one hundred percent joint and survivor annuity. If the beneficiary dies before receiving the guaranteed member account value, any remaining balance must be paid in a lump sum to a named contingent beneficiary, or if none, to the estate of the recipient.
 - (2) If the member dies and was not eligible for unreduced retirement benefits and if the beneficiary is one person, the beneficiary may select:
 - (a) A lump sum payment of the member's account value; or
 - (b) A lifetime monthly annuity effective on the first of the month following the month of the member's death. The amount of the monthly annuity is equal to an amount that would have been paid to the beneficiary under a one hundred percent joint and survivor annuity without reduction for early retirement and using the disability option reduction factor. If the beneficiary dies before receiving the guaranteed member account value, any remaining balance must be paid in a lump sum to a named contingent beneficiary, or if none, to the estate of the recipient.

- (3) If the member dies and multiple beneficiaries are eligible for death benefits, the plan shall pay the member's account value to the member's beneficiaries.
- c. If a member or beneficiary receiving benefits under this plan dies before the total amount of benefits paid to either or both equals the amount of the member's account value, the difference must be paid in a lump sum to a named beneficiary, or if none, to the estate of the recipient.

SECTION 5. AMENDMENT. Section 15-39.1-20 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-20. Withdrawal from fund.

When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter, and by accepting the refund, the member is waiving any right to participate in the fund under the same provisions that existed at the time the refund was accepted regardless of whether the member later repurchases refunded service credit. A member or a beneficiary of a member may elect, at the time and under rules adopted by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member ~~as allowed under~~ the beneficiary to the extent permitted by section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2009~~2011.

Approved April 27, 2011
Filed April 27, 2011

CHAPTER 125

HOUSE BILL NO. 1134

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

AN ACT to create and enact two new subsections to section 15-39.1-04 of the North Dakota Century Code, relating to definitions of member tiers under the teachers' fund for retirement; to amend and reenact subsection 1 of section 15-39.1-09, subsection 1 of section 15-39.1-10, and sections 15-39.1-12, 15-39.1-18, 15-39.1-19.1, and 15-39.1-19.2 of the North Dakota Century Code, relating to employee and employer contribution requirements, eligibility for normal unreduced retirement benefits, eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the teachers' fund for retirement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁷ **SECTION 1.** Two new subsections to section 15-39.1-04 of the North Dakota Century Code are created and enacted as follows:

"Tier one grandfathered member" for purposes of sections 15-39.1-10 and 15-39.1-12 means a tier one member who, as of June 30, 2013, is vested as a tier one member in accordance with section 15-39.1-11; and

- a. Is at least fifty-five years of age; or
- b. Has a combined total of years of service credit in the plan and years of age which equals or exceeds sixty-five.

"Tier one nongrandfathered member" for purposes of sections 15-39.1-10 and 15-39.1-12 means a tier one member who does not qualify as a tier one grandfathered member.

SECTION 2. AMENDMENT. Subsection 1 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided by law, every teacher is a member of the fund and must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Member contributions increase to nine and seventy-five hundredths percent per annum beginning July 1, 2012, and increase thereafter to eleven and seventy-five hundredths percent per annum beginning July 1, 2014. Except as otherwise provided by law, every governmental body employing a teacher shall pay to the fund eight and seventy-five hundredths percent per annum of the salary of each teacher employed by it. Contributions to be paid by a governmental body employing a teacher increase to ten and seventy-five hundredths percent per annum

⁴⁷ Section 15-39.1-04 was also amended by section 1 of House Bill No. 1133, chapter 124.

beginning July 1, 2012, and increase thereafter to twelve and seventy-five hundredths percent per annum beginning July 1, 2014. The required amount of member and employer contributions must be reduced to seven and seventy-five hundredths percent per annum effective on the July first that follows the first valuation showing a ratio of the actuarial value of assets to the actuarial accrued liability of the teachers' fund for retirement that is equal to or greater than ninety percent. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

⁴⁸ **SECTION 3. AMENDMENT.** Subsection 1 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The following members who have acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 are eligible to receive monthly lifetime normal unreduced retirement benefits under this section:
 - a. All tier one and tier two members who have ~~earned three years of teaching service credit and who have~~ attained the age of sixty-five years.
 - b. All tier one grandfathered members who have ~~earned three years of teaching service credit and who have~~ a combined total of years of service credit and years of age which equals or exceeds eighty-five.
 - c. All ~~tier two members who have earned five years of teaching service credit and who have attained the age of sixty five years~~ one nongrandfathered members and tier two members who are at least sixty years of age and who have combined total of years of service credit and years of age which equals or exceeds ninety.
 - d. All ~~tier two members who have earned five years of teaching service credit and who have a combined total of years of service credit and years of age which equals or exceeds ninety.~~

SECTION 4. AMENDMENT. Section 15-39.1-12 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-12. Early reduced retirement benefits.

~~A tier one member who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may retire prior to the normal retirement age as set forth in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty five or the age at which current service plus age equals eighty five. A tier two member who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty five may retire prior to the normal retirement age as set forth in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty five or the age at which current service plus age equals ninety according to the following schedule:~~

⁴⁸ Section 15-39.1-10 was also amended by section 2 of House Bill No. 1133, chapter 124.

1. All tier one grandfathered member benefits must be reduced by six percent per annum from the earlier of:
 - a. Age sixty-five; or
 - b. The age at which the sum of the member's current years of service credit and years of age equals eighty-five.
2. All tier one nongrandfathered member and tier two member benefits must be reduced by eight percent per annum from the earlier of:
 - a. Age sixty-five; or
 - b. The later of:
 - (1) Age sixty; or
 - (2) The age at which the sum of the member's current years of service credit and years of age equals ninety.

SECTION 5. AMENDMENT. Section 15-39.1-18 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-18. Disability retirements.

1. Any member may also retire and receive a disability annuity if, after a period of at least ~~one year~~five years of service as a member in this state, the member ~~suffers from~~qualifies for total disability as determined by the board.
2. The amount of the disability annuity is the ~~greater of the~~ amount computed by the retirement formula in section 15-39.1-10 without consideration of age ~~or the amount computed by that formula without consideration of age but assuming the member had twenty years of credited service.~~ A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16, except the level retirement income with social security option or the partial lump sum option.
3. The disability annuity continues until the death or prior recovery of the disabled annuitant. The board shall ascertain by periodic medical examinations the continued disability status of a disabled annuitant.
4. If a disabled annuitant recovers and returns to active teaching, that annuitant is entitled to the retirement benefit credits which the annuitant earned prior to the time of disablement, and the credits which the annuitant earned after returning to active teaching must be added to those earned prior to disablement.

SECTION 6. AMENDMENT. Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-19.1. Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit.

1. a. Except as otherwise provided in section 15-39.1-19.2, a retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or

15-39.2 may not return to covered employment until thirty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the reemployed retiree's contract as follows:

- (1) Retiree reemployment of nine months or less, annual limit is seven hundred hours;
 - (2) Retiree reemployment of ten months, annual limit is eight hundred hours;
 - (3) Retiree reemployment of eleven months, annual limit is nine hundred hours; or
 - (4) Retiree reemployment of twelve months, annual limit is one thousand hours.
- b. Employment as a noncontracted substitute teacher does not apply to the annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit.
- c. The retired member and the retired member's employer must notify the fund office in writing within thirty days of the retired member's return to covered employment. ~~Should the retired member's employment exceed the annual hour limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.~~
- d. A retired member who returns to teaching shall pay the member contributions required by section 15-39.1-09 ~~on those earnings~~the salary received by the retired member ~~after reaching the annual hour limit. The member contributions must be included in the retired member's account value and may not be refunded except as provided under subdivision a of subsection 2 of section 15-39.1-19.1 and section 15-39.1-17.~~
- e. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member ~~both before and after the retired member reaches the annual hour limit.~~
- f. A retired teacher who returns to teaching and does not exceed the annual hour limit must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.

- g. A retired teacher who returns to teaching and exceeds the annual hour limit must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit for the member. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.
2. Upon the retired teacher's subsequent retirement, the member's benefit must be resumed as follows:
- a. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's contributions paid to the fund after the member's benefit was suspended must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity, plus any postretirement benefit adjustments granted during the period of reemployment, the first day of the month following the teacher's re-retirement.
 - b. If the teacher subsequently retires with two or more but less than five years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity computed according to this chapter based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received. The new annuity is payable the first day of the month following the member's re-retirement.
 - c. If the teacher subsequently retires with five or more years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity plus an additional annuity based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity based on all years of service computed under subsection 2 of section 15-39.1-10. The new annuity is payable the first day of the month following the member's re-retirement.

SECTION 7. AMENDMENT. Section 15-39.1-19.2 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-19.2. Retired teachers return to active service - Critical shortage areas and disciplines - Rules.

1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher must:
 - a. Return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule;

- b. If retired after January 1, 2001, have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties but may not engage in full-time or part-time teaching duties during the one-year separation from service; and
 - c. Notify the fund office in writing within thirty days of the retired member's return to covered employment. The retired member's employer must also notify the fund office in writing within thirty days of the retired member's return to covered employment.
2. A retired teacher who returns to teaching under this section ~~is not required to~~ shall pay the ~~employee assessment~~ member contributions required by section 15-39.1-09 on the salary of the retired member. The member contributions must be included in the retired member's account value and may not be refunded except as provided under section 15-39.1-17. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.
 3. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member.

SECTION 8. EFFECTIVE DATE. Sections 6 and 7 of this Act become effective July 1, 2012, and sections 3, 4, and 5 of this Act become effective July 1, 2013.

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