

HOUSE BILL NO. 1097

Introduced by

Government and Veterans Affairs Committee

(At the request of the Teachers' Fund for Retirement)

1 A BILL for an Act to amend and reenact sections 15-39.1-04, 15-39.1-09, 15-39.1-10.3,
2 15-39.1-11, 15-39.1-17, 15-39.1-19.1, 15-39.1-20, 15-39.1-25, and 15-39.1-30 of the North
3 Dakota Century Code, relating to employer and teacher contributions under the teachers' fund
4 for retirement.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 15-39.1-04 of the 1999 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **15-39.1-04. Definitions.** For purposes of this chapter, unless the context or subject
9 matter otherwise requires:

- 10 1. "Account value" means the amount of contributions to the fund by or on behalf of a
11 member, plus interest, to which the member or the member's beneficiary or estate
12 is entitled under section 15-39.1-17 or 15-39.1-20.
- 13 2. "Actuarial equivalent" means the annual amount determined by calculations based
14 on mortality tables, purchasable with a given amount at a stated age.
- 15 ~~2.~~ 3. "Beneficiary" means the person designated in writing by the member except that in
16 the absence of such designation, if the member is married, the member's spouse
17 must be the primary beneficiary. If the member is married, and if the member
18 wishes to name an alternate beneficiary, the member's spouse must consent in
19 writing to the member's designation. If the member dies without having named a
20 contingent beneficiary to receive any remaining benefits due after the death of the
21 beneficiary, the primary beneficiary may name a contingent beneficiary.
- 22 ~~3.~~ 4. "Board" means the board of trustees of the teachers' fund for retirement.

1 4- 5. "Contract" means a written agreement with ~~any~~ a school board or other governing
2 body of ~~any~~ a school district of this state or a letter of appointment by a state
3 institution, state agency, or other employer participating in the fund.

4 5- 6. "Fund" means the teachers' fund for retirement.

5 6- 7. "Interest" as applied to ~~member assessments~~ account value is an annual rate of
6 six percent compounded monthly and as applied to the repurchase of credit for
7 withdrawn years is six percent compounded annually.

8 7- 8. "Retirement" means cessation of covered employment and acceptance of a benefit
9 under former chapter 15-39, or chapter 15-39.1 or 15-39.2.

10 8- 9. "Retirement annuity" means the payments made by the fund to a member after
11 retirement, these payments beginning on the first or fifteenth day of the month
12 following eligibility for a benefit.

13 9- 10. "Salary" means a member's earnings in eligible employment under this chapter for
14 teaching, supervisory, administrative, ~~and~~ or extracurricular services during a
15 school year reported as salary on the member's federal income tax withholding
16 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.
17 125, 401(k), 403(b), 414(h), or 457, plus the portion of the amount contributed by
18 or on behalf of the teacher included in the member's account value pursuant to
19 subsection 1 of section 15-39.1-09. "Salary" with respect to a member who begins
20 participation in the plan under former chapter 15-39, or chapter 15-39.1 or 15-39.2
21 after June 30, 1996, may not exceed the annual compensation limits established
22 under 26 U.S.C. 401(a)(17)(B), as amended by the Omnibus Budget Reconciliation
23 Act of 1993 [Pub. L. 103-66; 107 Stat. 312]. The annual compensation limit is one
24 hundred fifty thousand dollars, as adjusted by the commissioner of the internal
25 revenue service for increases in the cost of living in accordance with 26 U.S.C.
26 401(a)(17)(B). "Salary" does not include fringe benefits such as payments for
27 unused sick leave, personal leave, vacation leave, housing allowances,
28 transportation expenses, early retirement incentive pay, severance pay, medical
29 insurance, workers' compensation benefits, disability insurance premiums or
30 benefits, referee pay, busdriver pay, janitorial pay, or salary received by a member
31 in lieu of previously employer-provided fringe benefits.

10- 11. "State institution" includes the school for the blind, the school for the deaf, and the North Dakota youth correctional center.

11- 12. "Teacher" means:

- a. All persons licensed to teach in this state by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services in ~~any~~ a state institution or by ~~any~~ a school board or other governing body of ~~any~~ a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in ~~any~~ a state institution or in the school system of ~~any~~ a school district in this state.
- b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the state board for vocational and technical education, the professional staff of the division of independent study, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
- c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on July 1, 1995, and licensed staff of teachers centers, but only if the person was previously a member of and has credits in the fund.
- d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

SECTION 2. AMENDMENT. Section 15-39.1-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-09. Membership in fund and ~~assessments~~ contributions - Employer payment of ~~employee~~ teacher contribution.

1. Except as provided in subsection 2 of section 15-39.1-10.3 and subsection 3, 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.~~ Every governmental body employing a teacher shall elect one of the following optional contribution methods pursuant to rules adopted by the board:

a. The governmental body shall pay to the fund seven and seventy-five hundredths percent per annum of the salary of each teacher employed by it. Each teacher must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which amount shall be deducted from the teacher's salary and paid to the fund. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund. The amount contributed by or on behalf of the teacher under this subdivision equal to seven and seventy-five hundredths percent of that teacher's salary must be included in the teacher's account value under subsection 1 of section 15-39.1-04.

b. The governmental body shall pay to the fund fifteen and fifty hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund. One-half of the amount contributed to the fund under this subdivision must be included in the teacher's account value under subsection 1 of section 15-39.1-04 and included in salary under subsection 10 of section 15-39.1-04.

2. Each employer that has elected the option contained in subdivision a of subsection 1, at its option, may pay all or a portion of the teacher contributions required by subdivision a of subsection 1 for all compensation earned after June 30, 1983. The amount paid must be paid by the employer in lieu of contributions by the ~~employee~~ teacher. If an employer decides not to pay the teacher contributions, the amount that would have been paid under subdivision a of subsection 1 will continue to be deducted from compensation. If teacher contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal

Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these teacher contributions by effecting an equal cash reduction in the gross salary of the ~~employee~~ teacher or by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. A person, except the superintendent of public instruction, who is certified to teach in this state by the education standards and practices board and who is first employed and entered upon the payroll of the superintendent of public instruction after January 6, 2001, may elect to become a participating member of the public employees retirement system. An election made by a person to participate in the public employees retirement system under this subsection is irrevocable.

SECTION 3. AMENDMENT. Section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-10.3. Multiple plan membership - Eligibility for benefits - Amount of benefits.

1. a. For the purpose of determining vesting of rights under this chapter, a teacher's years of service credit is the total of the years of service credit earned in the fund and the years, with twelve months of compensation equal to a year, of service employment earned in any number of the following:
 - (1) The public employees retirement system.
 - (2) The highway patrolmen's retirement system.
- b. If a teacher terminates eligible employment under the fund, if that teacher has not received a refund of ~~member assessments~~ the teacher's account value, and if that teacher begins eligible employment in a plan described in

paragraph 1 or 2 of subdivision a, that teacher may elect to remain an inactive member of the fund without refund of ~~assessments~~ the account value. The board shall terminate the inactive status of a teacher under this subdivision if the teacher gains eligible employment under this chapter or if the teacher terminates eligible employment under a plan described in paragraph 1 or 2 of subdivision a.

c. A teacher who has service credit in the fund and in any number of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter, calculated by using the certified salaries of the retirement plan of last membership in the computation of final average monthly salary. The board shall calculate benefits for a teacher under this section by using only those years of service credit earned under this chapter.

2. If a teacher, who is a member of the fund, is also employed in any position where membership in the public employees retirement system is required, then for purposes of current employment the teacher is a member of the retirement system in which the teacher has the most years of service credit. If the teacher has an equal amount of service credit in both the fund and the public employees retirement system, the teacher is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the teacher the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the teacher is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member ~~assessments~~ and employer contributions at the rates currently existing for that system. If the teacher is required to be a member of the public employees retirement system, the board, at the teacher's election, shall designate the teacher an inactive member of the fund without refund of the teacher's ~~accumulated assessments with interest~~ account value until the teacher ceases the employment ~~which~~ that requires membership in both the fund and the public employees retirement system.

3. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of ~~assessments~~ the account value at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.

SECTION 4. AMENDMENT. Section 15-39.1-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-11. Vesting of rights. When any member has ~~paid assessments and~~ earned three years of service in this state and has either made contributions or has had contributions made on behalf of the member pursuant to section 15-39.1-09, that member has a vested right to a retirement annuity but is not entitled to payments under this chapter until the member meets the requirements set forth in section 15-39.1-10 or 15-39.1-12.

SECTION 5. AMENDMENT. Section 15-39.1-17 of the 1999 Supplement to 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~~ account value 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~~ account value. 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~~ a member under this section has not paid into the fund ~~assessments~~ contributions equal to the amounts required to be paid under section 15-39.1-09, the applicant shall pay ~~any~~ the 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~~ that exceed the ~~assessments paid by the member to the fund plus interest~~ member's account value, 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 ~~his~~ the 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~~ member's account value, the member's beneficiary ~~shall~~ is entitled to receive a final payment equal to the ~~assessments the member paid to the fund plus interest~~ member's account value as provided in section 15-39.1-20 less the amount of the annuity payments made.

SECTION 6. AMENDMENT. Section 15-39.1-19.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-19.1. (Contingent effective date and expiration date - See note) Annuities discontinued on resumption of teaching. 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 sixty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment for a maximum of ninety working days and continue receiving a monthly retirement benefit. For purposes of this section, a working day is four or more hours of teaching. The board may waive this restriction in emergency situations.

Should the retired member's employment exceed the ninety-day maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund

office will result 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 ninety-day maximum.

~~Any retired member who returns to teaching shall pay the required assessments~~
Pursuant to the election made by the employer in section 15-39.1-09, teacher and employer contributions must be paid on those earnings received by the retired member after the ninety-day maximum. ~~The employer shall pay the required contributions in a like manner.~~

Upon the teacher's subsequent retirement, the member's benefit must be resumed as follows:

1. If the teacher subsequently retires with less than two years of additional credited service, the teacher's ~~assessments~~ contributions plus interest paid to the fund during the reemployment period must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity the first day of the month following the teacher's re-retirement.
2. If the teacher subsequently retires with more than two years of additional credited service, the retired person's annuity is 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. The new annuity is payable the first day of the month following the member's re-retirement.

(Contingent effective date and expiration date - See note) Annuities discontinued on resumption of teaching.

1. 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 sixty calendar days have elapsed from the member's retirement date. Except as otherwise provided in this section, a retired member may then return to covered employment for a maximum of ninety working days and continue receiving a monthly retirement benefit. For purposes of this section, a working day is four or more hours of teaching. The board may waive this restriction in emergency situations. Should the retired member's employment exceed the ninety-day maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office will result in the loss of one month's annuity benefit. Except as otherwise

provided in this section, the retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the ninety-day maximum. ~~A retired member who returns to teaching shall pay the required assessments~~ Pursuant to the election made by the employer in section 15-39.1-09, teacher and employer contributions must be paid on those earnings received by the retired member after the ninety-day maximum. ~~The employer shall pay the required contributions in a like manner.~~

2. A retired member may return to teaching for up to one year without losing any benefits provided at least fifty percent of the salary earned by that person is placed in a school district's educational foundation or a private educational foundation. ~~Employee~~ Teacher and employer ~~assessments~~ contributions under this arrangement must be paid by the person's employer regardless of which option under subsection 1 of section 15-39.1-09 the employer has elected. ~~Assessments~~ Contributions must be paid on the total salary earned by the retired member without regard to the amount of money placed in an educational foundation. A retired member reemployed under the provisions of this subsection must be treated as retired for all other purposes under this chapter. Notwithstanding subdivision a of subsection 3, a retired member may not earn any additional service during the period of reemployment. The member's benefits may not be adjusted to reflect changes in the member'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, additional benefits normally available to an active member, such as disability benefits, are not available to a retired member reemployed under this subsection, and refunds may not be made to a retired member at the end of that person's period of reemployment. For purposes of this subsection, a school district's educational foundation must be a nonprofit or charitable organization exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].
3. Upon the teacher's subsequent retirement, the member's benefit must be resumed as follows:

1 a. If the teacher subsequently retires with less than two years of additional
2 credited service, the teacher's ~~assessments~~ contributions paid to the fund
3 during the reemployment period, plus interest, must be refunded in
4 accordance with section 15-39.1-20 and the teacher is entitled to receive the
5 discontinued annuity the first day of the month following the teacher's
6 re-retirement.

7 b. If the teacher subsequently retires with more than two years of additional
8 credited service, the retired person's annuity is the sum of the discontinued
9 annuity, plus an additional annuity computed according to this chapter based
10 upon years of service and average salaries earned during the period of
11 reemployment. The new annuity is payable the first day of the month
12 following the member's re-retirement.

13 **SECTION 7. AMENDMENT.** Section 15-39.1-20 of the 1999 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

15 **15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible
16 under the terms of this chapter to participate in the fund, the member may, after a period of one
17 hundred twenty days, withdraw from the fund and is then entitled to receive a refund of
18 ~~assessments accumulated with interest~~ the member's account value. The
19 one-hundred-twenty-day requirement may be waived by the board when ~~if~~ the board has
20 evidence the teacher will not be returning to teach in ~~North Dakota~~ this state. The refund is in
21 lieu of any other benefits to which the member may be entitled under the terms of this chapter.
22 The ~~accumulated assessments~~ account value of a member who ceases to be eligible to
23 participate in the fund before becoming vested must be automatically refunded. The
24 ~~assessments plus interest earned~~ account value, if not claimed by the member, must be
25 returned in the fiscal year following the date of termination. The automatic refund must be
26 waived provided the member presents the board with a statement of intent to return to teach in
27 ~~North Dakota~~ this state within thirty-six months after eligibility to participate in the fund ceases.
28 The board may waive the automatic refund for members who present to the board a statement
29 of intent to return to teach in ~~North Dakota~~ this state within a period exceeding thirty-six months
30 after eligibility to participate in the fund ceases. A member may elect, at the time and under
31 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 section 401(a)(31) of the Internal Revenue Code.

SECTION 8. AMENDMENT. Section 15-39.1-25 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-25. Certain rights and obligations fixed. Except as otherwise provided in chapter 15-39.2, the laws pertaining to the teachers' fund for retirement, as contained in chapter 15-39.1, apply to teachers, superintendents, assistant superintendents, principals, assistant principals, special teachers, supervisors of instruction and other supervisors, presidents, deans, school librarians, and registrars employed by any state institution under the supervision and control of the board of higher education and the commissioner of higher education, only in the form and substance as chapter 15-39 existed as of July 1, 1967, and all such persons have only such rights, benefits, and privileges as provided in chapter 15-39 as it existed on July 1, 1967. Such persons are responsible or liable for only those costs ~~or~~ assessments, or contributions provided for in chapter 15-39 as such laws and chapter existed on July 1, 1967. The board of higher education or any institution under the supervision or control of the board of higher education is not liable for any costs, assessments, contributions, or payments under the provisions of chapter 15-39 in excess of that provided or required under the provisions of chapter 15-39 as such laws and chapter existed on July 1, 1967. It is ~~hereby declared to be~~ the intent of the legislative assembly to freeze the rights, benefits, privileges, assessments, contributions, payments, and obligations of the persons, offices, and institutions specified in this section to those rights, benefits, privileges, assessments, contributions, payments, and obligations as they existed under the provisions of chapter 15-39 as such laws and chapter existed in form and substance as of July 1, 1967, and that all legislative enactments subsequent to such date do not affect or apply to those persons, offices, and institutions specified in this section or their rights, benefits, privileges, assessments, contributions, payments, and obligations as fixed by this section.

SECTION 9. AMENDMENT. Section 15-39.1-30 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-30. Confidentiality of records. Information pertaining to a teacher's retirement ~~assessments~~ contributions and ~~accumulated interest~~ account value, disability applications and benefits, and surviving spouse applications and benefits under this chapter is

1 confidential and is not a public record. The information and records may be disclosed, under
2 rules adopted by the board, only to:

3 1. A person to whom the teacher has given written consent to have the information
4 disclosed.

5 2. A person legally representing the teacher, upon proper proof of representation, and
6 unless the teacher specifically withholds consent.

7 3. A person authorized by a court order.