

Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1068

Introduced by

Government and Veterans Affairs Committee

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

1 A BILL for an Act to create and enact a new section to chapter 15-39.1 of the North Dakota
2 Century Code, relating to teachers' fund for retirement compliance with the Internal Revenue
3 Code; and to amend and reenact subsection 9 of section 15-39.1-04, subsection 4 of section
4 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-19.2, and 15-39.1-20 of the North Dakota
5 Century Code, relating to incorporation of Internal Revenue Code changes since the last
6 enactment of those provisions into state law, retired teachers returning to work, and teachers'
7 fund for retirement compliance with the Internal Revenue Code.

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

9 **SECTION 1. AMENDMENT.** Subsection 9 of section 15-39.1-04 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 9. "Salary" means a member's earnings in eligible employment under this chapter for
12 teaching, supervisory, administrative, and extracurricular services during a school
13 year reported as salary on the member's federal income tax withholding
14 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.
15 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, 2005. "Salary"
16 includes bonus amounts paid to members for performance, retention, experience,
17 and other service-related bonuses, unless amounts are conditioned on or made in
18 anticipation of an individual member's retirement or termination. The annual salary
19 of each member taken into account in determining benefit accruals and
20 contributions may not exceed the annual compensation limits established under
21 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2005, as adjusted for increases in
22 the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1,
23 2005. A salary maximum is not applicable to members whose participation began
24 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.
- 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 bonuses.
- h. Other benefits or payments not defined in subdivisions a through g which the board determines to be ineligible teachers' fund for retirement salary.

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, 2005, 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:

1 **15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating
2 under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum
3 benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on
4 August 1, ~~2003~~ 2005, for governmental plans. This section does not constitute an election
5 under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] in effect on
6 August 1, ~~2003~~ 2005.

7 **SECTION 4. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code
8 is amended and reenacted as follows:

9 **15-39.1-19.2. (~~Effective through July 31, 2005~~) Retired teachers return to active**
10 **service - Critical shortage areas and disciplines - Rules.**

- 11 1. A retired teacher who is receiving a retirement annuity under chapter 15-39,
12 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits
13 under the provisions of this section or elect to return to teaching under the
14 provisions of section 15-39.1-19.1. To return to teaching under this section, a
15 retired teacher must:
 - 16 a. Return to teach in a critical shortage geographical area or subject discipline
17 as determined by the education standards and practices board by rule; and
 - 18 b. If retired after January 1, 2001, have been receiving a retirement annuity for at
19 least one year. A retired teacher may perform noncontracted substitute
20 teaching duties but may not engage in full-time or part-time teaching duties
21 during the one-year separation from service.
- 22 2. A retired teacher who returns to teaching under this section is not required to pay
23 the employee assessment required by section 15-39.1-09. A retired teacher who
24 returns to teaching under the provisions of this section must be treated as retired
25 for all other purposes under this chapter. A retired teacher may not earn any
26 additional service during the period of reemployment. The retired teacher's
27 benefits may not be adjusted to reflect changes in the retired teacher's age or final
28 average monthly salary at the end of the period of reemployment, any optional
29 form of payment elected under section 15-39.1-16 remains effective during and
30 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.

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. The accumulated assessments of a member who ceases to be
eligible to participate in the fund before becoming vested must be automatically refunded. The
assessments plus interest earned, if not claimed by the member, must be returned in the fiscal
year following the date of termination. The automatic refund must be waived provided the
member presents the board with a statement of intent to return to teach in North Dakota within
thirty-six months after eligibility to participate in the fund ceases. The board may waive the
automatic refund for members who present to the board a statement of intent to return to teach
in North Dakota within a period exceeding thirty-six months after eligibility to participate in the
fund ceases. 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 section 401(a)(31) of the Internal
Revenue Code in effect on August 1, ~~2003~~ 2005.

SECTION 6. A new section to chapter 15-39.1 of the North Dakota Century Code is
created and enacted as follows:

Internal Revenue Code compliance. The board shall administer the plan in
compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of
the Internal Revenue Code and regulations adopted pursuant to those provisions as they apply
to governmental plans.