

Sixty-second  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1258**

Introduced by

Representatives Grande, Headland, Louser

Senators Andrist, G. Lee, Oehlke

1 A BILL for an Act to create and enact a new section to chapter 15-39.1 and chapter 15-39.3 of  
2 the North Dakota Century Code, relating to a defined contribution retirement plan for teachers;  
3 to amend and reenact sections 15-39.1-09 and 15-39.1-30 of the North Dakota Century Code,  
4 relating to a defined contribution retirement plan for teachers; to provide a penalty; to provide a  
5 statement of legislative intent; to provide an appropriation; and to provide a continuing  
6 appropriation.

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

8 **SECTION 1.** A new section to chapter 15-39.1 of the North Dakota Century Code is created  
9 and enacted as follows:

10 **Teachers' fund for retirement closed to new members.**

11 Notwithstanding any other provision of law, after June 30, 2012, the teachers' fund for  
12 retirement plan established under this chapter is closed to new members.

13 **SECTION 2. AMENDMENT.** Section 15-39.1-09 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **15-39.1-09. (Contingent expiration date - See note) Membership in fund and**  
16 **assessments - Employer payment of employee contribution.**

17 1. Except as otherwise provided by law, every teacher first employed before July 1, 2012,  
18 is a member of the fund and must be assessed upon the teacher's salary seven and  
19 seventy-five hundredths percent per annum, which must be deducted, certified, and  
20 paid monthly to the fund by the disbursing official of the governmental body by which  
21 the teacher is employed. Except as otherwise provided by law, every governmental  
22 body employing a teacher shall pay to the fund eight and seventy-five hundredths  
23 percent per annum of the salary of each teacher employed by it. The disbursing official

1 of the governmental body shall certify the governmental body payments and remit the  
2 payments monthly to the fund.

3 2. Each employer, at its option, may pay the teacher contributions required by  
4 subsection 1 for all compensation earned after June 30, 1983. The amount paid must  
5 be paid by the employer in lieu of contributions by the employee. If an employer  
6 decides not to pay the contributions, the amount that would have been paid will  
7 continue to be deducted from compensation. If contributions are paid by the employer,  
8 they must be treated as employer contributions in determining income tax treatment  
9 under this code and the federal Internal Revenue Code. If contributions are paid by the  
10 employer, they may not be included as gross income of the teacher in determining tax  
11 treatment under this code and the Internal Revenue Code until they are distributed or  
12 made available. The employer shall pay these teacher contributions from the same  
13 source of funds used in paying compensation to the teachers. The employer shall pay  
14 these contributions by effecting an equal cash reduction in the gross salary of the  
15 employee or by an offset against future salary increases. If teacher contributions are  
16 paid by the employer, they must be treated for the purposes of this chapter in the  
17 same manner and to the same extent as teacher contributions made prior to the date  
18 the contributions were assumed by the employer. The option given employers by this  
19 subsection must be exercised in accordance with rules adopted by the board.

20 3. A person, except the superintendent of public instruction, who is certified to teach in  
21 this state by the education standards and practices board and who is first employed  
22 and entered upon the payroll of the superintendent of public instruction after  
23 January 6, 2001, may elect to become a participating member of the public  
24 employees retirement system. An election made by a person to participate in the  
25 public employees retirement system under this subsection is irrevocable. ~~Nonteaching-~~  
26 ~~employees of the superintendent of public instruction, including the superintendent of~~  
27 ~~public instruction, may elect to transfer to the public employees retirement system~~  
28 ~~pursuant to section 54-52-02.13. Employees of the state board for career and~~  
29 ~~technical education may elect to transfer to the public employees retirement system~~  
30 ~~pursuant to section 54-52-02.14.~~

- 1           4.   An individual who is first employed and entered upon the payroll of the state board for  
2                career and technical education after July 1, 2007, may elect to become a participating  
3                member of the public employees retirement system. An election made by an individual  
4                to participate in the public employees retirement system under this subsection is  
5                irrevocable.

6           **SECTION 3. AMENDMENT.** Section 15-39.1-30 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **15-39.1-30. Confidentiality of records.**

9           All records relating to the retirement benefits of a member or a beneficiary under this  
10 chapter and chapter 15-39.3 are confidential and are not public records. The information and  
11 records may be disclosed, under rules adopted by the board, only to:

- 12           1.   A person to whom the teacher has given written consent to have the information  
13                disclosed.
- 14           2.   A person legally representing the teacher, upon proper proof of representation, and  
15                unless the teacher specifically withholds consent.
- 16           3.   A person authorized by a court order.
- 17           4.   A member's participating employer, limited to information concerning the member's  
18                years of service credit, years of age, employer and employee contribution amounts,  
19                and salary. The board may share other types of information as needed by the  
20                employer to validate the employer's compliance with existing state or federal law. Any  
21                information provided to the member's participating employer under this subsection  
22                must remain confidential except as provided in subsection 6.
- 23           5.   The administrative staff of the public employees retirement system for purposes  
24                relating to membership and benefits determination.
- 25           6.   State or federal agencies for the purpose of validating member eligibility or employer  
26                compliance with existing state or federal law.
- 27           7.   Member interest groups approved by the board, limited to information concerning the  
28                member's death.
- 29           8.   A government child support enforcement agency for purposes of establishing paternity  
30                or establishing, modifying, or enforcing a child support obligation of the member.

- 1       9.   The member's spouse or former spouse, that individual's legal representative, and the  
2       judge presiding over the member's dissolution proceeding for purposes of aiding the  
3       parties in drafting a qualified domestic relations order under section 15-39.1-12.2. The  
4       information disclosed under this subsection must be limited to information necessary  
5       for drafting the order.
- 6       10.   Beneficiaries designated by a participating member or a former participating member  
7       to receive benefits after the member's death, but only after the member's death.  
8       Information relating to beneficiaries may be disclosed to other beneficiaries of the  
9       same member.
- 10      11.   The general public, but only after the board has been unable to locate the member for  
11      a period in excess of two years, and limited to the member's name and the fact that  
12      the board has been unable to locate the member.
- 13      12.   Any person if the board determines disclosure is necessary for treatment, operational,  
14      or payment purposes, including the completion of necessary documents.
- 15      13.   A person if the information relates to an employer service purchase, but the  
16      information must be limited to the member's name and employer, the retirement  
17      program in which the member participates, the amount of service credit purchased by  
18      the employer, and the total amount expended by the employer for that service credit  
19      purchase. Information identified under this subsection may only be obtained from the  
20      member's employer.

21       **SECTION 4.** Chapter 15-39.3 of the North Dakota Century Code is created and enacted as  
22 follows:

23       **15-39.3-01. Definition of terms.**

24       As used in this chapter, unless the context otherwise requires:

- 25       1.   "Board" means the board of trustees of the teachers' fund for retirement.
- 26       2.   "Eligible employee" means a teacher.
- 27       3.   "Employer" means a governmental body employing a teacher.
- 28       4.   "Participating member" means an eligible employee participating in the defined  
29       contribution retirement plan established under this chapter.
- 30       5.   "Salary" means a member's earnings in eligible employment under this chapter for  
31       teaching, supervisory, administrative, and extracurricular services during a school year

1 reported as salary on the member's federal income tax withholding statements plus  
2 any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k),  
3 403(b), 414(h), or 457 in effect on August 1, 2011. The term includes bonus amounts  
4 paid to members for performance, retention, experience, and other service-related  
5 bonuses, unless amounts are conditioned on or made in anticipation of an individual  
6 member's retirement or termination. The annual salary of each member taken into  
7 account in determining benefit accruals and contributions may not exceed the annual  
8 compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on August 1,  
9 2011, as adjusted for increases in the cost of living in accordance with 26 U.S.C.  
10 401(a)(17)(B) in effect on August 1, 2011. "Salary" does not include:

- 11 a. Fringe benefits or side, nonwage benefits that accompany or are in addition to a  
12 member's employment, including insurance programs, annuities, transportation  
13 allowances, housing allowances, meals, lodging, or expense allowances, or other  
14 benefits provided by a member's employer.
- 15 b. Insurance programs, including medical, dental, vision, disability, life, long-term  
16 care, workforce safety and insurance, or other insurance premiums or benefits.
- 17 c. Payments for unused sick leave, personal leave, vacation leave, or other unused  
18 leave.
- 19 d. Early retirement incentive pay, severance pay, or other payments conditioned on  
20 or made in anticipation of retirement or termination.
- 21 e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- 22 f. Amounts received by a member in lieu of previously employer-provided benefits  
23 or payments that are made on an individual selection basis.
- 24 g. Recruitment bonuses.
- 25 h. Other benefits or payments not defined in subdivisions a through g which the  
26 board determines to be ineligible teachers' fund for retirement salary.

27 6. "Teacher" means:

- 28 a. Every person licensed by the education standards and practices board who is  
29 contractually employed in teaching, supervisory, administrative, or extracurricular  
30 services by a state institution, multidistrict special education unit, area career and  
31 technology center, regional education association, school board, or other

1 governing body of a school district of this state, including superintendent,  
2 assistant superintendent, business manager, principal, assistant principal, and  
3 special teacher. For purposes of this subdivision, the term includes a person  
4 contractually employed by one of the above employers to provide teaching,  
5 supervisory, administrative, or extracurricular services to a separate state  
6 institution, state agency, multidistrict special education unit, area career and  
7 technology center, regional education association, school board, or other  
8 governing body of a school district of this state under a third-party contract.

9 b. The superintendent of public instruction, every assistant superintendent of public  
10 instruction, every county superintendent, every assistant superintendent, every  
11 supervisor of instruction, the professional staff of the department of career and  
12 technical education, the professional staff of the center for distance education,  
13 and the professional staff of an interim school district.

14 **15-39.3-02. Members.**

15 An eligible employee who is first employed or who has withdrawn from the teachers' fund  
16 for retirement and is returning to covered employment, and who is entered upon the payroll of  
17 that individual's employer after June 30, 2012, is a member of the defined contribution  
18 retirement plan established under this chapter. A retiree who is receiving benefits under chapter  
19 15-39.1 who returns to covered employment is not eligible to participate in the defined  
20 contribution plan and is subject to the provisions of sections 15-39.1-19.1 and 15-39.1-19.2.

21 **15-39.3-03. Administration.**

22 The board shall administer the defined contribution retirement plan established under this  
23 chapter and the board or vendors contracted for by the board shall invest the assets of the plan.  
24 The board is the fiduciary and the trustee of the plan. The board has the exclusive authority and  
25 responsibility to employ or contract with personnel and for services that the board determines  
26 necessary for the proper administration of and investment of assets of the plan, including  
27 managerial, professional, legal, clerical, technical, and administrative personnel or services. The  
28 board may enter cooperative agreements with the public employees retirement system board  
29 for defined contribution plan services.

1       **15-39.3-04. Direction of investments.**

2       Each participating member shall direct the investment of the individual's accumulated  
3 employer and employee contributions and earnings to one or more investment choices within  
4 available categories of investment provided by the board.

5       **15-39.3-05. Administrative expenses - Continuing appropriation.**

6       The administrative expenses of the plan must be paid by the participating members in a  
7 manner determined by the board. The board or vendors contracted for by the board may charge  
8 reasonable administrative expenses and deduct those expenses from a participating member's  
9 account in the defined contribution retirement plan established under this chapter. The board  
10 shall place any money deducted in an administrative expenses account with the state treasurer.  
11 All moneys in the administrative expenses account, not otherwise appropriated, or so much of  
12 the moneys as may be necessary, are appropriated to the board on a continuing basis for the  
13 purpose of retaining a consultant as required for the administration of this chapter.

14       **15-39.3-06. Participation in other plans.**

15       A participating member may not participate in any other public sector retirement benefits  
16 plan for simultaneous service rendered to the same public sector employer. However, this  
17 section does not prohibit a participating member from participating in a retirement plan  
18 established by this state or other public sector employer under the federal Internal Revenue  
19 Code.

20       **15-39.3-07. Contributions - Penalty.**

- 21       1. Each participating member must be assessed upon the teacher's salary seven and  
22 seventy-five hundredths percent per annum, which must be deducted, certified, and  
23 paid monthly to the participating member's account by the disbursing official of the  
24 governmental body by which the teacher is employed.
- 25       2. Every governmental body employing a teacher shall pay to the participating member's  
26 account eight and seventy-five hundredths percent per annum of the salary of each  
27 teacher employed by it. The disbursing official of the governmental body shall certify  
28 the governmental body payments and remit the payments monthly to the participating  
29 member's account.
- 30       3. Each employer, at its option, may pay the teacher contributions required by  
31 subsection 1 for all compensation earned after June 30, 2012. The amount paid must

1 be paid by the employer in lieu of contributions by the employee. If an employer  
2 decides not to pay the contributions, the amount that would have been paid will  
3 continue to be deducted from compensation. If contributions are paid by the employer,  
4 they must be treated as employer contributions in determining income tax treatment  
5 under this code and the federal Internal Revenue Code. If contributions are paid by the  
6 employer, they may not be included as gross income of the teacher in determining tax  
7 treatment under this code and the Internal Revenue Code until they are distributed or  
8 made available. The employer shall pay these contributions from the same source of  
9 funds used in paying compensation to the teachers. The employer shall pay these  
10 contributions by effecting an equal cash reduction in the gross salary of the employee  
11 or by an offset against future salary increases. If teacher contributions are paid by the  
12 employer, they must be treated for the purposes of this chapter in the same manner  
13 and to the same extent as teacher contributions made prior to the date the  
14 contributions were assumed by the employer. The option given employers by this  
15 subsection must be exercised in accordance with rules adopted by the board.

16 **15-39.3-08. Acceptance of rollovers.**

17 The plan may allow a participating member to transfer or roll over funds from other qualified  
18 plans into the member's account under rules adopted by the board.

19 **15-39.3-09. Military service under the Uniformed Services Employment and**  
20 **Reemployment Rights Act - Member retirement credit.**

21 A member reemployed under the Uniformed Services Employment and Reemployment  
22 Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is  
23 entitled to receive retirement credit for the period of qualified military service. The required  
24 contribution for the credit must be made in the same manner and by the same party as would  
25 have been made had the employee been continuously employed. If the salary the member  
26 would have received during the period of service is not reasonably certain, the member's  
27 average rate of compensation during the twelve-month period immediately preceding the  
28 member's period of service or, if shorter, the period of employment immediately preceding that  
29 period, times the number of months of credit being purchased must be used. A member must be  
30 allowed up to three times the period of military service or five years, whichever is less, to make  
31 any required payments. This provision applies to all qualifying periods of military service since



1 October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent  
2 with this provision must be refunded. An employee shall make application to the employer for  
3 credit and provide a DD form 214 to verify service.

4 **15-39.3-10. Vesting.**

5 A participating member is immediately one hundred percent vested in that member's  
6 contributions made to that member's account under this chapter. A participating member vests  
7 in the employer contributions made on that member's behalf to an account under this chapter  
8 according to the following schedule:

- 9 1. Upon completion of two years of service, fifty percent.  
10 2. Upon completion of three years of service, seventy-five percent.  
11 3. Upon completion of four years of service, one hundred percent.

12 A participating member also becomes one hundred percent vested in the employer  
13 contributions upon reaching age sixty-five. Any forfeiture as a result of the failure of a  
14 participating member to vest in the employer contribution must be deposited in the  
15 administrative expenses account.

16 **15-39.3-11. Refund beneficiaries.**

17 A participating or former participating member may nominate one or more individuals as a  
18 refund beneficiary by filing written notice of nomination with the board. If the participating  
19 member or former participating member is married at the time of the nomination and the  
20 participant's spouse is not the refund beneficiary for one hundred percent of the account, the  
21 nomination is not effective unless the nomination is signed by the participant's spouse.  
22 However, the board may waive this requirement if the spouse's signature cannot be obtained  
23 because of extenuating circumstances.

24 **15-39.3-12. Qualified domestic relations orders.**

- 25 1. The board or a vendor contracted for by the board shall apportion a participating  
26 member's account in the defined contribution retirement plan under this chapter in  
27 accordance with the applicable requirements of any qualified domestic relations order.  
28 The board shall review a domestic relations order submitted to it to determine if the  
29 domestic relations order is qualified under this section and under rules adopted by the  
30 board for determining the qualified status of domestic relations orders, administering  
31 distributions, and apportioning accounts under the qualified orders. Upon

determination of the domestic relations order as qualified, the board shall notify the participating member, the named alternate payee, and the vendor, if applicable, of its receipt of the qualified domestic relations order.

2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, made pursuant to a North Dakota domestic relations law, which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of a participating member's account in the defined contribution retirement plan under this chapter. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise allowed under this chapter. However, a qualified domestic relations order may require distribution from an account in the defined contribution retirement plan under this chapter notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must specify:

- a. The name and last-known mailing address of the participating member and the name and the mailing address of each alternate payee covered by the order;
- b. The amount or percentage of the participating member's account to be paid to each alternate payee;
- c. The number of payments or period to which the order applies; and
- d. Each retirement plan to which the order applies.

#### **15-39.3-13. Distributions.**

1. A participating member is eligible to receive distribution of that member's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

1       3. A former participating member may elect one or a combination of several of the  
2       following methods of distribution of the accumulated balance:

3       a. A lump sum distribution to the recipient.

4       b. A lump sum direct rollover to another qualified plan, to the extent allowed by  
5       federal law.

6       c. Periodic distributions, as authorized by the board.

7       d. No current distribution, in which case the accumulated balance must remain in  
8       the plan until the former participating member or refund beneficiary elects a  
9       method or methods of distribution under this section, to the extent allowed by  
10      federal law.

11      A surviving spouse beneficiary may elect one or a combination of several of the  
12      methods of distribution provided in subdivision a, b, or c. A beneficiary who is not the  
13      surviving spouse may only choose a lump sum distribution of the accumulated  
14      balance.

15      4. If the former participating member's vested account balance is less than one thousand  
16      dollars, the board shall automatically refund the member's vested account balance  
17      upon termination of employment. The member may waive the refund if the member  
18      submits a written statement to the board, within one hundred twenty days after  
19      termination, requesting that the member's vested account balance remain in the plan.

20      **15-39.3-14. Disability benefits.**

21      The board shall allow distribution of the participating member's vested account balance if  
22      the board determines that the participating member has become totally and permanently  
23      disabled. If approved, the disabled member has the same distribution options as provided in  
24      subdivisions a and c of subsection 3 of section 15-39.3-13. However, if the member chooses  
25      the periodic distribution option, the member may receive distributions only for as long as the  
26      disability continues and the member submits the necessary documentation and undergoes  
27      medical testing required by the board, or for as long as the member participates in a  
28      rehabilitation program required by the board, or both. If the board determines that a member no  
29      longer meets the eligibility definition, the board shall discontinue the disability retirement benefit.

1       **15-39.3-15. Board to provide information.**

2       The board shall provide information to participating members under this chapter. The  
3 information must include at a minimum the employee's current account balance, administrative  
4 and investment costs, and coordination of benefits information. Notwithstanding any other  
5 provision of law, the board is not liable for any investment decision made by an employee based  
6 upon information provided to an employee under this chapter.

7       **15-39.3-16. State income tax deductions.**

8       For the purposes of state income tax, the assessment imposed by this chapter on the  
9 employee must be treated in accordance with existing state statutes on state income tax.

10       **15-39.3-17. Exemption from state premium tax.**

11       Premiums, consideration for annuities, and membership fees are exempt from premium  
12 taxes payable pursuant to section 26.1-03-17.

13       **15-39.3-18. Savings clause.**

14       If the board determines that any section of this chapter does not comply with applicable  
15 federal statutes or rules, the board shall adopt appropriate terminology with respect to that  
16 section as will comply with those federal statutes or rules. Any plan modifications made by the  
17 board pursuant to this section are effective until the effective date of any measure enacted by  
18 the legislative assembly providing the necessary amendments to this chapter to ensure  
19 compliance with the federal statutes or rules.

20       **15-39.3-19. Overpayments.**

21       The board has the right of setoff to recover overpayments made under this chapter and to  
22 satisfy any claims arising from embezzlement or fraud committed by a participating member,  
23 refund beneficiary, or other person who has a claim to a distribution or any other benefit from a  
24 plan governed by this chapter.

25       **15-39.3-20. Correction of records.**

26       The board shall correct errors in the records and actions in plans under this chapter and  
27 shall seek to recover overpayments and shall seek to collect underpayments.

28       **SECTION 5. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the only  
29 allowable expenditures that may be made relating to this Act during the first two years after  
30 enactment are for administrative costs of implementing this Act during which time the legislative

1 management shall receive two annual actuarial valuations of the teachers' fund for retirement to  
2 identify the fiscal effect of this Act.

3 **SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the general  
4 fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the  
5 sum as may be necessary, to the retirement and investment office for the purpose of  
6 implementing this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.