

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the  
Capitol in the City of Bismarck, on Monday, the sixth day of January,  
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1143  
(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

AN ACT to create and enact two new sections to chapter 15-39.1 of the North Dakota Century Code, relating to correction of errors in teachers' fund for retirement benefit calculations; to amend and reenact subsections 10 and 11 of section 15-39.1-04, sections 15-39.1-08, 15-39.1-14, 15-39.1-15, 15-39.1-19.1, 15-39.1-20, 15-39.1-23, and 15-39.1-24 of the North Dakota Century Code, relating to definitions, compensation of board members, mandatory retirement, return to teaching, withdrawal, failure to make required reports and payments, military service credit, and acceptance of rollovers from other qualified plans under the teachers' fund for retirement; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsections 10 and 11 of section 15-39.1-04 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

10. "State institution" includes the school for the blind, the school for the deaf, ~~the developmental center at westwood park, Grafton,~~ and the North Dakota youth correctional center.
11. "Teacher" means:
  - a. All persons certified 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 state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any 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 certified 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 15-39.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-08. Compensation of members.** Members of the board, excluding ex officio members, ~~must be compensated for attendance at meetings from the fund at the rate of fifty dollars per~~

~~day, plus expenses of travel, food, and lodging as allowed by law for state employees are entitled to receive sixty-two dollars and fifty cents as compensation per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the board. No member of the board may lose regular salary, vacation pay, vacation or any personal leave, or be denied right of attendance by the state or political subdivision thereof while serving on official business of the fund.~~

**SECTION 3. AMENDMENT.** Section 15-39.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-14. Retirement not mandatory ~~—When retirement occurs.~~** Nothing in this chapter may be construed as requiring retirement at any specific age. If the teacher elects to teach beyond age sixty-five ~~and is permitted to do so by the body for whom he works, he shall continue, the teacher continues~~ to earn credits at the same rate as prior to the age of sixty-five. ~~Retirement must be deemed to have occurred and benefits are payable from the date of last teaching prior to the filing of a written application for retirement benefits, except in the case of a teacher whose rights in the fund have become vested but who chooses not to retire prior to age sixty five, in which case the benefits must be paid from the date such teacher attains the age of sixty five.~~

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

**15-39.1-15. Withdrawal from fund - Return to teaching.** Any teacher who has withdrawn from the fund as set forth in this chapter may, by returning to teach ~~one full school year~~ in a public school or state institution of this state, regain credit for prior teaching by making the required payment. The required payment, if made within five years of ~~initial eligibility~~ returning to teach, is the amount that was ~~returned to the teacher on withdrawal~~ withdrawn with interest. In all other cases, the purchase cost must be on an actuarial equivalent basis. The fund may accept rollovers from other qualified plans under rules adopted by the board for the repurchase of refunds previously taken, but only to the extent the transfer is a rollover contribution that meets the requirements of section 408 of the Internal Revenue Code.

**SECTION 5. AMENDMENT.** Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.1. Annuities discontinued on resumption of teaching.** ~~The benefits payable to any retired person who has retired from teaching under chapter 15-39, 15-39.1, or 15-39.2 and who again returns to teaching in a public school or state institution in this state must be discontinued when the retired person's earnings during the fund's fiscal year exceed the maximum earnings allowed by the federal Social Security Act. Such person shall immediately notify the office of the fund in writing when the retired person's earnings have exceeded such maximum. Failure to notify the fund results in the loss of one month's annuity benefits when the payment of the annuity is resumed upon further retirement, in addition to the discontinuance of benefits paid after reaching such maximum. 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 person member who returns to teaching shall pay the required assessments on those earnings received after the maximum has been exceeded in the fiscal year and the 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 paid to the fund must be refunded in accordance with section 15-39.1-20 and the teacher is ~~not~~ entitled to receive the discontinued annuity ~~for those months of the fiscal year during which the earnings were in excess of the maximum earnings so established~~ 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 ~~must be~~ 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 ~~such~~ the period of reemployment. The new annuity is payable the first day of the month following the member's re-retirement.

**SECTION 6. AMENDMENT.** Section 15-39.1-20 of the 1995 Supplement to 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 accumulating five years of service credit must be automatically refunded. The assessments plus interest earned, if not claimed by the member, must be returned ~~during the month of January next 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. For distributions made after January 1, 1993, notwithstanding any provision of the plan to the contrary that would otherwise limit a member's refund election under this chapter, a member may elect, at the time and under rules established 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.

**SECTION 7. AMENDMENT.** Section 15-39.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-23. Penalties for failure to make required reports and payments.** ~~AN~~ Except for unintentional reporting errors, an employing body failing to file reports required by the board or failing to pay over for credit to the fund the amounts required to be paid by this chapter, is subject to a civil penalty of two hundred fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the report was required to be filed or the payment became due. The board, if satisfied the delay or underpayment was unintentional and excusable, may waive, or if paid, refund all or part of the two hundred fifty dollar penalty and may reduce the interest rate charge to the investment return rate used in the most recent actuarial valuation, compounded annually, but may not waive the entire amount of the interest. The penalty must be paid to the fund and deposited in the same manner as other receipts under this chapter.

In addition ~~no~~ a school district may not share in the apportionment of any money from the state for any year unless the school board, or an officer thereof, has made the reports required by the board as permitted by this chapter, and has paid over for credit to the fund the amounts required to be paid ~~by~~ under this chapter.

**SECTION 8. AMENDMENT.** Section 15-39.1-24 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-24. Purchase of additional credit.** Prior to retirement a teacher may purchase additional credit for use toward retirement in the following instances and manner:

1. Any teacher may purchase service credit for years of teaching service at an out-of-state school or educational institution supported by public taxation out of North Dakota. However, a teacher must complete five years of creditable service in this state before the teacher is eligible to purchase the first five years of service credit for out-of-state teaching under this subsection. The teacher may purchase any part of the remaining years of service credit for out-of-state teaching with each year of service credit conditional upon the teacher completing one additional year of creditable service in this state following the out-of-state teaching. The years of out-of-state teaching service do not qualify for credit in this state if the years claimed also qualify for retirement benefits from an out-of-state retirement system.
2. Any teacher who has received an honorable discharge from military service of the United States of America may receive credit for no more than four years of active service, upon filing application and proof with the board and subject to the terms of this chapter upon teaching one year in North Dakota subsequent to military service. Members qualified to receive military credit under the ~~Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.]~~ Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] shall only pay member assessments plus interest pursuant to rules adopted by the board. For those individuals becoming eligible to receive military credit under the ~~Veterans' Reemployment Rights Act~~ Uniformed Services Employment and Reemployment Rights Act after June 30, 1991, the employer shall pay the required employer contribution for military service.
3. A teacher who attends a college, university, or other recognized school for two consecutive semesters or three consecutive quarters, other than summer sessions, for the purpose of improving the teacher's qualifications in the teaching profession is entitled to have such periods while in attendance at that college, university, or school credited, not to exceed three years of teaching service, under this chapter. To be eligible for purchasing credit under this subsection, the teacher must have taught at least one full school year in North Dakota immediately preceding entrance into the college, university, or school, or, immediately following such training, the teacher must have taught not less than one full school year in a public school or state institution of this state.
4. A teacher may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. Service credit for a legislative session must be purchased within one year after the adjournment of that legislative session. As an alternative to a teacher purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement by which payment for service credit for time spent during each legislative session by the teacher serving as a member of the legislative assembly is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary without reduction for a leave of absence taken by the teacher during the legislative session.
5. A teacher may purchase credit for service as an administrator or teacher in the field of education if employed by an agency of the United States government teaching school age children. The maximum service that may be purchased under this subsection is ten years.
6. An active teacher who is elected president of a professional educational organization recognized by the board and who serves in a full-time capacity in lieu of teaching may purchase service credit for the time spent serving as president. The service credit must be purchased within one year after the teacher leaves the position. As an alternative to purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement under which payment for service credit for the time spent as president of the professional educational organization is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary as president.

7. The fund may accept rollovers from other qualified plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirements of section 408 of the Internal Revenue Code.
8. Except as provided in subsections 2, 4, and 6, the amount of additional service eligible to be purchased under this section must be credited to the teacher when the teacher has made the required payment. In all cases, the purchase cost must be on an actuarial equivalent basis.

**SECTION 9.** Two new sections to chapter 15-39.1 of the North Dakota Century Code are created and enacted as follows:

**Correction of errors - Adjustment to actuarial equivalent.** If any change or error in the records of the fund or any participating employer or error in any calculation results in any person receiving from the fund more than that person would have been entitled to receive had the records been correct, the board shall correct the error and, as far as practicable, adjust the payment in such a manner that the actuarial equivalent of the benefit to which the person was entitled is paid or the board may offset the amount of the overpayment from the amount of future retirement benefit payments. However, if the person agrees to repay the fund for the cost of the error upon terms acceptable to the board, no actuarial adjustment to the person's retirement benefit need be made.

**Correction of errors - Lump sum payment.** If any change or error in the records of the fund or any participating employer or any error in calculation results in any person receiving less from the fund than that person would have been entitled to receive had the records been correct, the board shall correct the error and adjust the payment in such a manner that the benefit to which the person was correctly entitled is paid. In addition, the board shall remit payment to the person in a lump sum to compensate that person for the difference between what was paid and what should have been paid. No interest may be assessed against the fund for providing payment for the correction of any loss of benefits.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1143.

House Vote:      Yeas    95      Nays    0      Absent    2

Senate Vote:    Yeas    47      Nays    0      Absent    2

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1997.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1997.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1997,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State