

**SENATE BILL NO. 2070**

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 subsections 2 and 9 of section 15-39.1-04,  
2 subsections 1 and 4 of section 15-39.1-10, sections 15-39.1-11, 15-39.1-12, 15-39.1-16,  
3 subsection 2 of section 15-39.1-17, sections 15-39.1-20, and 15-39.1-24 of the North Dakota  
4 Century Code, relating to definitions, eligibility for benefits, vesting, early retirement, annuities,  
5 death of member, withdrawals, and purchase of additional credit under the teachers' fund for  
6 retirement; and to repeal section 15-39.1-12.1 of the North Dakota Century Code, relating to  
7 partial service retirements under the teachers' fund for retirement.

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

9 **SECTION 1. AMENDMENT.** Subsections 2 and 9 of section 15-39.1-04 of the 1997  
10 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 11 2. "Beneficiary" means the person designated in writing by the member ~~or, in the~~  
12 ~~absence of such designation, the member's surviving spouse, if any~~ except that in  
13 the absence of such designation, if the member is married, the member's spouse  
14 must be the primary beneficiary. If the member is married, and if the member  
15 wishes to name an alternate beneficiary, the member's spouse must consent in  
16 writing to the member's designation. If the member dies without having named a  
17 contingent beneficiary to receive any remaining benefits due after the death of the  
18 beneficiary, the primary beneficiary may name a contingent beneficiary.
- 19 9. "Salary" means a member's earnings in eligible employment under this chapter for  
20 teaching, supervisory, administrative, and extracurricular services during a school  
21 year reported as salary on the member's federal income tax withholding  
22 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.  
23 125, 401(k), 403(b), 414(h), or 457. "Salary" with respect to a member who begins  
24 participation in the plan under former chapter 15-39, or chapter 15-39.1 or 15-39.2

1 after June 30, 1996, may not exceed the annual compensation limits established  
2 under 26 U.S.C. 401(a)(17)(B), as amended by the Omnibus Budget Reconciliation  
3 Act of 1993 [Pub. L. 103-66; 107 Stat. 312]. The annual compensation limit is one  
4 hundred fifty thousand dollars, as adjusted by the commissioner of the internal  
5 revenue service for increases in the cost of living in accordance with 26 U.S.C.  
6 401(a)(17)(B). "Salary" does not include fringe benefits such as payments for  
7 unused sick leave, personal leave, vacation leave, housing allowances,  
8 transportation expenses, early retirement incentive pay, severance pay, medical  
9 insurance, workers' compensation benefits, disability insurance premiums or  
10 benefits, referee pay, busdriver pay, janitorial pay, or salary received by a member  
11 in lieu of previously employer-provided fringe benefits ~~under an agreement~~  
12 ~~between the member and participating employer entered into within sixty months~~  
13 ~~before retirement.~~

14 **SECTION 2. AMENDMENT.** Subsections 1 and 4 of section 15-39.1-10 of the 1997  
15 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 16 1. The following members are eligible to receive monthly lifetime retirement benefits  
17 under this section:
- 18 a. All members who have ~~completed five~~ earned three years of teaching credit  
19 and who have attained the age of sixty-five years.
  - 20 b. All members who have ~~completed five~~ earned three years of teaching credit  
21 and who have a combined total of years of service credit and years of age  
22 which equals eighty-five.
- 23 4. Retirement benefits must begin no later than April first of the calendar year  
24 following the year the member attains age seventy and one-half or April first of the  
25 calendar year following the year the member terminates covered employment,  
26 whichever is later. Payments must be made over a period of time which does not  
27 exceed the life expectancy of the member or the joint life expectancy of the  
28 member and the beneficiary. Payment of minimum distributions must be made in  
29 accordance with section 401(a)(9) of the Internal Revenue Code, and the  
30 regulations issued under that section, as applicable to governmental plans.

1           **SECTION 3. AMENDMENT.** Section 15-39.1-11 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **15-39.1-11. Vesting of rights.** When any member has paid assessments ~~for a period~~  
4 ~~of five~~ and earned three years ~~for~~ of service in this state, that member has a vested right to a  
5 retirement annuity but is not entitled to payments under this chapter until the member meets the  
6 requirements set forth in section 15-39.1-10 or 15-39.1-12.

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

9           **15-39.1-12. Early retirement.** Any teacher who has acquired a vested right to a  
10 retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may  
11 retire prior to the normal retirement age as set forth herein but the benefits to which ~~he~~ the  
12 member is then entitled must be reduced to the actuarial equivalent of the benefit credits  
13 earned to the date of early retirement from the earlier of age sixty-five or the age at which  
14 current service plus age equals eighty-five.

15           **SECTION 5. AMENDMENT.** Section 15-39.1-16 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17           **15-39.1-16. Option of teachers eligible to receive annuities.** The board shall adopt  
18 rules providing for the receipt of retirement benefits in the following optional forms:

19           Option one. Upon the death of the teacher, the reduced retirement allowance must be  
20 continued throughout the life of, and paid to, the person as the teacher has nominated by  
21 written designation filed with the board at the time of retirement. If the person designated to  
22 receive the teacher's reduced retirement allowance predeceases the teacher, the reduced  
23 retirement allowance must be converted to a single life retirement annuity under which benefit  
24 payments, if the person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if  
25 the person designated dies on or after July 1, 1989, must begin on the first day of the month  
26 following the death of the person designated.

27           Option two. Upon the death of the teacher, one-half of the reduced retirement  
28 allowance must be continued throughout the life of, and paid to, the person as the teacher has  
29 nominated by written designation filed with the board at the time of retirement. If the person  
30 designated to receive the teacher's reduced retirement allowance predeceases the teacher, the  
31 reduced retirement allowance must be converted to a single life retirement annuity under which

1 benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1,  
2 1989, or, if the designated beneficiary dies on or after July 1, 1989, must begin on the first day  
3 of the month following the death of the person designated.

4 Option three. Upon the death of the teacher within five years of the commencement of  
5 annuity payments, the payments must be continued for the remainder of the five-year period to  
6 the person as the teacher has nominated by written designation filed with the board ~~at the time~~  
7 ~~of retirement.~~

8 Option four. Upon the death of the teacher within ten years of the commencement of  
9 annuity payments, the payments must be continued for the remainder of the ten-year period to  
10 the person as the teacher has nominated by written designation filed with the board ~~at the time~~  
11 ~~of retirement.~~

12 Option five. Level retirement income with social security option, which is available to  
13 teachers retiring before social security is payable.

14 The amount of the reduced retirement allowance payable upon the exercise of any of these  
15 options must be computed upon an actuarial basis through the use of standard actuarial tables  
16 and based upon the ages of the teacher and the teacher's designated beneficiary. A member's  
17 spouse, if any, must consent in writing to the member's choice of benefit payment option for any  
18 benefit payments commencing after June 30, 1999. The board may rely on the member's  
19 representations about that person's marital status in determining the member's marital status.  
20 The spouse's written consent must be witnessed by a notary or a plan representative. If the  
21 spouse does not consent, or cannot be located, the member's annuity benefit must be paid  
22 using option two, the fifty percent joint and survivor option.

23 **SECTION 6. AMENDMENT.** Subsection 2 of section 15-39.1-17 of the North Dakota  
24 Century Code is amended and reenacted as follows:

25 2. If the death of a member who has acquired a vested interest should occur prior to  
26 retirement, then the member's beneficiary may apply for a refund of the member's  
27 assessments accumulated with interest. If there is no beneficiary, then the same  
28 must be paid to the surviving children, or if none, to the member's estate; provided,  
29 however, that if no probate proceedings have been instituted within thirty days of  
30 the death of the member, then to the heirs at law who file claim with the fund within  
31 one hundred fifty days of the death of the member. In lieu of a refund, the

1 beneficiary may elect either to receive a monthly annuity in accordance with option  
2 one under section 15-39.1-16, with the amount of the annuity being determined as  
3 though the deceased member had retired under the option on the day benefits  
4 commence to the beneficiary; or the beneficiary may elect to receive for sixty  
5 months an amount equal to the monthly annuity the member would have received  
6 if the member had attained age sixty-five and retired, based on the member's  
7 credited service to date of death. If any ~~applicant for an annuity~~ member under  
8 this section has not paid into the fund assessments equal to the amounts required  
9 to be paid under section 15-39.1-09, the ~~member~~ applicant shall pay any  
10 deficiency into the fund before receiving the annuity.

11 **SECTION 7. AMENDMENT.** Section 15-39.1-20 of the 1997 Supplement to the North  
12 Dakota Century Code is amended and reenacted as follows:

13 **15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible  
14 under the terms of this chapter to participate in the fund, the member may, after a period of one  
15 hundred twenty days, withdraw from the fund and is then entitled to receive a refund of  
16 assessments accumulated with interest. The one-hundred-twenty-day requirement may be  
17 waived by the board when it has evidence the teacher will not be returning to teach in North  
18 Dakota. The refund is in lieu of any other benefits to which the member may be entitled under  
19 the terms of this chapter. The accumulated assessments of a member who ceases to be  
20 eligible to participate in the fund before ~~accumulating five years of service credit~~ becoming  
21 vested must be automatically refunded. The assessments plus interest earned, if not claimed  
22 by the member, must be returned in the fiscal year following the date of termination. The  
23 automatic refund must be waived provided the member presents the board with a statement of  
24 intent to return to teach in North Dakota within thirty-six months after eligibility to participate in  
25 the fund ceases. The board may waive the automatic refund for members who present to the  
26 board a statement of intent to return to teach in North Dakota within a period exceeding  
27 thirty-six months after eligibility to participate in the fund ceases. ~~For distributions made after~~  
28 ~~January 1, 1993, notwithstanding any provision of the plan to the contrary that would otherwise~~  
29 ~~limit a member's refund election under this chapter, a~~ A member may elect, at the time and  
30 under rules ~~established~~ adopted by the board, to have any portion of an eligible rollover

1 distribution paid directly in a direct rollover to an eligible retirement plan specified by the  
2 member as allowed under section 401(a)(31) of the Internal Revenue Code.

3 **SECTION 8. AMENDMENT.** Section 15-39.1-24 of the 1997 Supplement to the North  
4 Dakota Century Code is amended and reenacted as follows:

5 **15-39.1-24. Purchase of additional credit.** Prior to retirement a teacher who provides  
6 proof of eligibility under rules adopted by the board may purchase additional credit for use  
7 toward retirement in the following instances and manner:

- 8 1. ~~Any A~~ teacher may purchase service credit for years of elementary or secondary  
9 teaching service at an accredited out-of-state public, private, or parochial school or  
10 ~~educational institution supported by public taxation out of North Dakota. However,~~  
11 ~~a teacher must complete five years of creditable service in this state before the~~  
12 ~~teacher is eligible to purchase the first five years of service credit for out of state~~  
13 ~~teaching under this subsection. The teacher may purchase any part of the~~  
14 ~~remaining years of service credit for out of state teaching with each year of service~~  
15 ~~credit conditional upon the teacher completing one additional year of creditable~~  
16 ~~service in this state following the out of state teaching. The years of out of state~~  
17 ~~teaching service do not qualify for credit in this state if the years claimed also~~  
18 ~~qualify for retirement benefits from an out of state retirement system.~~
- 19 2. ~~Any A~~ teacher not qualified to receive military credit under the Uniformed Services  
20 Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat.  
21 3150; 38 U.S.C. 4301-4307] or Veterans' Reemployment Rights Act of 1991  
22 [Pub. L. 93-508; 88 Stat. 3150] who has received an honorable discharge from  
23 military service of the United States of America may receive purchase military  
24 credit for no more than four years of active service, upon filing application and  
25 proof with the board and subject to the terms of this chapter upon teaching one  
26 year in North Dakota subsequent to military service. Members qualified to receive  
27 military credit under the Uniformed Services Employment and Reemployment  
28 Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] shall  
29 only pay member assessments plus interest pursuant to rules adopted by the  
30 board. For those individuals becoming eligible to receive military credit under the  
31 Uniformed Services Employment and Reemployment Rights Act after June 30,

- 1           ~~1991, the employer shall pay the required employer contribution for military~~  
2           ~~service.~~
- 3           3. ~~A teacher who attends a college, university, or other recognized school for two~~  
4           ~~consecutive semesters or three consecutive quarters, other than summer sessions,~~  
5           ~~for the purpose of improving the teacher's qualifications in the teaching profession~~  
6           ~~is entitled to have credited such periods while in attendance at that college,~~  
7           ~~university, or school, not to exceed three years of teaching service, under this~~  
8           ~~chapter. To be eligible for purchasing credit under this subsection, the teacher~~  
9           ~~must have taught at least one full school year in North Dakota immediately~~  
10           ~~preceding entrance into the college, university, or school, or, immediately following~~  
11           ~~such training, the teacher must have taught not less than one full school year in a~~  
12           ~~public school or state institution of this state. A teacher may purchase service~~  
13           ~~credit for credit lost while on an approved leave of absence from teaching duties.~~
- 14           4. A teacher may purchase service credit for the time during each legislative session  
15           spent serving as a member of the legislative assembly while holding eligible  
16           employment under this chapter. ~~Service credit for a legislative session must be~~  
17           ~~purchased within one year after the adjournment of that legislative session.~~ As an  
18           alternative to a teacher purchasing service credit under this subsection, a teacher  
19           and the governmental body employing the teacher may enter into an agreement by  
20           which payment for service credit for time spent during each legislative session by  
21           the teacher serving as a member of the legislative assembly is made pursuant to  
22           section 15-39.1-09. The agreement must provide that contributions made pursuant  
23           to section 15-39.1-09 are calculated based on the teacher's annual salary without  
24           reduction for a leave of absence taken by the teacher during the legislative  
25           session.
- 26           5. A teacher may purchase credit for years of elementary or secondary teaching  
27           ~~service as an administrator or teacher in the field of education~~ if employed by an  
28           agency of the United States government ~~teaching school age children.~~ ~~The~~  
29           ~~maximum service that may be purchased under this subsection is ten years.~~
- 30           6. ~~An active~~ A teacher who is elected president of a professional educational  
31           organization recognized by the board and who serves in a full-time capacity in lieu

- 1 of teaching may purchase service credit for the time spent serving as president.  
2 ~~The service credit must be purchased within one year after the teacher leaves the~~  
3 ~~position.~~ As an alternative to purchasing service credit under this subsection, a  
4 teacher and the governmental body employing the teacher may enter into an  
5 agreement under which payment for service credit for the time spent as president  
6 of the professional educational organization is made pursuant to section  
7 15-39.1-09. The agreement must provide that contributions made pursuant to  
8 section 15-39.1-09 are calculated based on the teacher's annual salary as  
9 president.
- 10 7. A teacher may purchase service credit for years of elementary or secondary  
11 teaching service in an accredited North Dakota private or parochial school.
- 12 8. A teacher who has at least five years of teaching service credit in the fund may  
13 purchase credit not based on service for use toward retirement eligibility and  
14 benefits. The purchase of service credit for such nonqualified service as defined  
15 under section 415(n) of the Internal Revenue Code is limited to an aggregate of  
16 five years.
- 17 9. A teacher who had that person's North Dakota teaching service interrupted by  
18 military service in any branch of the United States armed forces and received an  
19 honorable discharge may receive credit for military service pursuant to applicable  
20 federal veterans' rights acts including the Uniformed Services Employment and  
21 Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C.  
22 4301-4307] or the Veterans' Reemployment Rights Act of 1991 [Pub. L. 93-508; 88  
23 Stat. 3150].
- 24 10. With the exception of military service, purchased service credit is not eligible for  
25 credit if the years claimed also qualify for retirement benefits from another  
26 retirement system.
- 27 11. The fund may accept rollovers from other qualified plans under rules adopted by  
28 the board for the purchase of additional service credit, but only to the extent the  
29 transfer is a rollover contribution that meets the requirements of section 408 of the  
30 Internal Revenue Code.

1     &. 12. ~~Except as provided in subsections 2, 4, and 6, the~~ The amount of additional  
2                   service eligible to be purchased under this section must be credited to the teacher  
3                   when the teacher has made the required payment. ~~In all cases~~ Except as provided  
4                   in subsections 4, 6, and 9, the purchase cost must be on an actuarial equivalent  
5                   basis.

6                   **SECTION 9. REPEAL.** Section 15-39.1-12.1 of the North Dakota Century Code is  
7     repealed.