

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

SENATE BILL NO. 2070  
(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

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

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

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

2. "Beneficiary" means the person designated in writing by the member ~~or, in the absence of such designation, the member's surviving spouse, if any~~ except that in the absence of such designation, if the member is married, the member's spouse must be the primary beneficiary. If the member is married, and if the member wishes to name an alternate beneficiary, the member's spouse must consent in writing to the member's designation. If the member dies without having named a contingent beneficiary to receive any remaining benefits due after the death of the beneficiary, the primary beneficiary may name a contingent beneficiary.
  
9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" with respect to a member who begins participation in the plan under former chapter 15-39, or chapter 15-39.1 or 15-39.2 after June 30, 1996, may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B), as amended by the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66; 107 Stat. 312]. The annual compensation limit is one hundred fifty thousand dollars, as adjusted by the commissioner of the internal revenue service for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B). "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, referee pay, busdriver pay, janitorial pay, or salary received by a member in lieu of previously employer-provided fringe benefits ~~under an agreement between the member and participating employer entered into within sixty months before retirement.~~

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

1. The following members are eligible to receive monthly lifetime retirement benefits under this section:
  - a. All members who have ~~completed five~~ earned three years of teaching credit and who have attained the age of sixty-five years.

- b. All members who have ~~completed five~~ earned three years of teaching credit and who have a combined total of years of service credit and years of age which equals eighty-five.
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, and the regulations issued under that section, as applicable to governmental plans.

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

**15-39.1-11. Vesting of rights.** When any member has paid assessments ~~for a period of five~~ and earned three years ~~for~~ of service in this state, 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 4. AMENDMENT.** Section 15-39.1-12 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

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

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

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

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

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. 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 ~~applicant for an annuity~~ member under this section has not paid into the fund assessments equal to the amounts required to be paid under section 15-39.1-09, the ~~member~~ applicant shall pay any deficiency into the fund before receiving the annuity.

**SECTION 7. AMENDMENT.** Section 15-39.1-20 of the 1997 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~~ 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. ~~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~~ A member may elect, at the time and under rules ~~established~~ 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 15-39.1-24 of the 1997 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 who provides proof of eligibility under rules adopted by the board may purchase additional credit for use toward retirement in the following instances and manner:

1. ~~Any A teacher may purchase service credit for years of elementary or secondary teaching service at an accredited out-of-state public, private, or parochial 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 A teacher not qualified to receive military credit under the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] or Veterans' Reemployment Rights Act of 1991 [Pub. L. 93-508; 88 Stat. 3150] who has received an honorable discharge from military service of the United States of America may receive purchase military 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 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 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 credited such periods while in attendance at that college, university, or school, 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. A teacher may purchase service credit for credit lost while on an approved leave of absence from teaching duties.~~
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 years of elementary or secondary teaching 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~~ A 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. A teacher may purchase service credit for years of elementary or secondary teaching service in an accredited North Dakota private or parochial school.
8. A teacher who has at least five years of teaching service credit in the fund may purchase credit not based on service for use toward retirement eligibility and benefits. The purchase of service credit for such nonqualified service as defined under section 415(n) of the Internal Revenue Code is limited to an aggregate of five years.
9. A teacher who had that person's North Dakota teaching service interrupted by military service in any branch of the United States armed forces and received an honorable discharge may receive credit for military service pursuant to applicable federal veterans' rights acts including the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] or the Veterans' Reemployment Rights Act of 1991 [Pub. L. 93-508; 88 Stat. 3150].
10. With the exception of military service, purchased service credit is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system.
11. 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. ~~12. Except as provided in subsections 2, 4, and 6, the~~ 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 Except as provided in subsections 4, 6, and 9, the purchase cost must be on an actuarial equivalent basis.

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

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2070.

Senate Vote:    Yeas    44        Nays    0        Absent    5

House Vote:    Yeas    94        Nays    0        Absent    4

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1999,

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

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