

**Fifty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2057  
(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to the purchase of service credit by employers under the teachers' fund for retirement; and to amend and reenact subsection 9 of section 15-39.1-04, sections 15-39.1-10.3, 15-39.1-10.6, 15-39.1-15, 15-39.1-16, 15-39.1-18, 15-39.1-19.1, and 15-39.1-20, and subsection 11 of section 15-39.1-24 of the North Dakota Century Code, relating to definition of salary, dual membership, benefit limitations, withdrawal, benefit options, disability retirement, discontinuance of retirement benefits, and acceptance of rollovers under the teachers' fund for retirement.

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

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

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, 132(f), 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, includes bonus amounts paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions 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). A salary maximum is not applicable to members whose participation began before July 1, 1996. "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.~~
- 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, workers' compensation, 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.** Section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-10.3. Multiple plan membership - Eligibility for benefits - Amount of benefits.**

- 1. a. For the purpose of determining vesting of rights and eligibility for benefits under this chapter, a teacher's years of service credit is the total of the years of service credit earned in the fund and the years, with twelve months of compensation equal to a year, of service employment earned in any number of the following alternate plans:
  - (1) The public employees retirement system.
  - (2) The highway patrolmen's retirement system.

Service credit may not exceed one year of service in any fiscal year in determining vesting and benefit eligibility.

- b. If a teacher terminates eligible employment under the fund, if that teacher has not received a refund of member ~~assessments~~ contributions, and if that teacher begins eligible employment in a plan described in paragraph 1 or 2 of subdivision a, that teacher may elect to remain an inactive member of the fund without refund of ~~assessments~~ contributions. The board shall terminate the inactive status of a teacher under this subdivision if the teacher gains eligible employment under this chapter or if the teacher terminates eligible employment under a plan described in paragraph 1 or 2 of subdivision a.
  - c. A Pursuant to rules adopted by the board, a teacher who has service credit in the fund and in any number of the alternate plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter, calculated by using the certified salaries of the retirement plan of last membership in the computation of final average monthly salary. The board shall calculate benefits for a teacher under this section by using only those years of service credit earned under this chapter. A teacher may elect to have benefits calculated using the benefit formula in subsection 2 of section 15-39.1-10 under either of the following calculation methods:
    - (1) Using the three highest certified fiscal year salaries of this plan in the computation of final average salary and all service credit earned in this plan; or
    - (2) Using the three highest certified fiscal year salaries of this plan combined with the alternate plan in the computation of final average salary and service credit not to exceed one year in any fiscal year when combined with the service credit earned in the alternate retirement plan.
- 2. a. If a teacher, who is a member of the eligible to participate in this fund, is also employed in any position where membership in the public employees eligible to participate in an alternate retirement system is required, then for purposes of current

~~employment the teacher is a member of the retirement system in which the teacher has the most years of service credit. If the teacher has an equal amount of service credit in both the fund and the public employees retirement system, the teacher is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the teacher the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the teacher is required to be a member under this subsection, the employee is a member of the teachers' fund for retirement for duties covered under this fund, and the employee is also a member of the public employees retirement system or highway patrolmen's retirement system for duties covered by those alternate retirement systems. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that the applicable system. If the teacher is required to be a member of the public employees retirement system, the board, at the teacher's election, shall designate the teacher an inactive member of the fund without refund of the teacher's accumulated assessments with interest until the teacher ceases the employment which requires membership in both the fund and the public employees retirement system.~~

b. If a teacher described in subdivision a was employed prior to August 1, 2003, and has dual member rights, the teacher may elect to begin participation in the alternate plan pursuant to the plan provisions on August 1, 2003, or may continue participation pursuant to the plan provisions in effect on July 31, 2003. A plan participation election is required by five p.m. on October 31, 2003. If an election is not received by the retirement plan, the participation and benefit calculation requirements of this chapter as of July 31, 2003, continue to be in effect for the teacher.

3. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.

**SECTION 3. AMENDMENT.** Section 15-39.1-10.6 of the North Dakota Century Code is amended and reenacted as follows:

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

**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 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 returning to teach, is the amount that was 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 15-39.1-16 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~~ teacher's designated beneficiary named 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~~ teacher's designated beneficiary named 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~~ twenty years of the commencement of annuity payments, the payments must be continued for the remainder of the ~~five-year~~ twenty-year period to the ~~person as the teacher has nominated by written designation filed with the board~~ teacher's designated beneficiary. This payment option is available to teachers who retire after July 31, 2003.

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~~ teacher's designated beneficiary.

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

Option six. Partial lump sum distribution option. A member who is eligible for an unreduced service retirement annuity under section 15-39.1-10 and who retires after July 31, 2003, may make a one-time election to receive a portion of the retirement annuity paid in a lump sum distribution upon retirement, pursuant to rules adopted by the board.

1. The eligible member may select a standard service retirement annuity or an optional service retirement annuity described in this section, together with a partial lump sum distribution. The partial lump sum distribution option is not available to members who have selected option five, the level income retirement option. This option is not available to disabled members or beneficiaries of deceased members. The partial lump sum distribution option may be elected only once by a member and may not be elected by a retiree.
2. The amount of the partial lump sum distribution under this section is twelve months of a standard service retirement annuity computed under section 15-39.1-10 and payable at the same time that the first monthly payment of the annuity is paid.
3. The service retirement annuity selected by the member must be actuarially reduced to reflect the partial lump sum distribution option selected by the member.
4. Before a retiring member selects a partial lump sum distribution under this section, the fund shall provide a written notice to the member of the amount by which the member's annuity will be reduced because of the selection.

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 designated as beneficiary, 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.** Section 15-39.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-18. Disability retirements.**

1. Any member may also retire and receive a disability annuity if, after a period of at least one year of service as a member in this state, the member suffers from total disability as determined by the board.
2. The amount of the disability annuity is the greater of the amount computed by the retirement formula in section 15-39.1-10 without consideration of age or the amount computed by that formula without consideration of age but assuming the member had twenty years of credited service. A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16, except the level retirement income with social security option or the partial lump sum option.
3. The disability annuity continues until the death or prior recovery of the disabled annuitant. The board shall ascertain by periodic medical examinations the continued disability status of a disabled annuitant.
4. If a disabled annuitant recovers and returns to active teaching, that annuitant is entitled to the retirement benefit credits which the annuitant earned prior to the time of disablement, and the credits which the annuitant earned after returning to active teaching must be added to those earned prior to disablement.

**SECTION 7. AMENDMENT.** Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.1. (Effective from January 29, 2001, through July 31, 2005) Annuities discontinued on resumption of teaching.**

1. Except as otherwise provided in section 15-39.1-19.2, 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 thirty calendar days have elapsed from the member's retirement date. Except as otherwise provided in this section, a retired member may then return to covered employment ~~for a maximum of seven hundred hours per year~~ under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the reemployed retiree's contract as follows:
  - a. Retiree reemployment of nine months or less, annual limit is seven hundred hours;
  - b. Retiree reemployment of ten months, annual limit is eight hundred hours;
  - c. Retiree reemployment of eleven months, annual limit is nine hundred hours; or
  - d. Retiree reemployment of twelve months, annual limit is one thousand hours.

Employment as a substitute teacher does not apply to the ~~seven hundred hour restriction~~. ~~The board may waive this restriction in emergency situations~~ annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit. Should the retired member's employment exceed the ~~seven hundred hour maximum~~ annual hour limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit. Except as otherwise provided in this section, the retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the ~~seven hundred hour maximum~~ annual hour limit. A retired member who returns to teaching shall pay the required ~~assessments~~ contributions on those earnings received by the retired member after reaching the seven hundred hour maximum annual hour limit. The employer shall pay the required contributions in a like manner.

2. A retired member may return to teaching for up to one year without losing any benefits provided at least fifty percent of the salary earned by that person is placed in a school district's educational foundation or a private educational foundation. Employee and employer ~~assessments~~ contributions under this arrangement must be paid by the person's employer. ~~Assessments~~ Contributions must be paid on the total salary earned by the retired member without regard to the amount of money placed in an educational foundation. A retired member reemployed under the provisions of this subsection must be treated as retired for all other purposes under this chapter. Notwithstanding subdivision a of subsection 3, a retired member may not earn any additional service during the period of reemployment. The member's benefits may not be adjusted to reflect changes in the member's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, additional benefits normally available to an active member, such as disability benefits, are not available to a retired member reemployed under this subsection, and refunds may not be made to a retired member at the end of that person's period of reemployment. For purposes of this subsection, a school district's educational foundation must be a nonprofit or charitable organization exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].
3. Upon the retired teacher's subsequent retirement, the member's benefit must be resumed as follows:
  - a. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's ~~assessments~~ contributions paid to the fund must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity, plus any postretirement benefit adjustments granted during the period of reemployment, the first day of the month following the teacher's re-retirement.
  - b. If the teacher subsequently retires with two or more but less than five years of additional earned credited service, the retired person's annuity is the greater of 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 the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity computed according to this chapter based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received. The new annuity is payable the first day of the month following the member's re-retirement.
  - c. If the teacher subsequently retires with five or more years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity plus an additional annuity based upon years of service and average salaries earned during the period of reemployment plus any postretirement

benefit adjustments granted during the period of reemployment, or a recalculated annuity based on all years of service computed under subsection 2 of section 15-39.1-10. The new annuity is payable the first day of the month following the member's re-retirement.

**(Effective after July 31, 2005) Annuities discontinued on resumption of teaching.**

1. Except as otherwise provided in section 15-39.1-19.2, 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 thirty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment ~~for a maximum of seven hundred hours per year~~ under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the reemployed retiree's contract as follows:

- a. Retiree reemployment of nine months or less, annual limit is seven hundred hours;
- b. Retiree reemployment of ten months, annual limit is eight hundred hours;
- c. Retiree reemployment of eleven months, annual limit is nine hundred hours; or
- d. Retiree reemployment of twelve months, annual limit is one thousand hours.

Employment as a substitute teacher does not apply to the ~~seven hundred hour~~ restriction. The board may waive this restriction in emergency situations annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit.

Should the retired member's employment exceed the ~~seven hundred hour maximum~~ annual hour limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office results 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 ~~seven hundred hour maximum~~ annual hour limit.

A retired member who returns to teaching shall pay the required ~~assessments~~ contributions on those earnings received by the retired member after reaching the seven hundred hour maximum annual hour limit. The employer shall pay the required contributions in a like manner.

2. Upon the retired teacher's subsequent retirement, the member's benefit must be resumed as follows:

1. a. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's ~~assessments~~ contributions paid to the fund must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity, plus any postretirement benefit adjustments granted during the period of reemployment, the first day of the month following the teacher's re-retirement.

2. b. If the teacher subsequently retires with two or more but less than five years of additional earned credited service, the retired person's annuity is the greater of 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 the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity computed according to this chapter based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received. The new annuity is payable the first day of the month following the member's re-retirement.

3. c. If the teacher subsequently retires with five or more years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity plus an additional annuity based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity based on all years of service computed under subsection 2 of section 15-39.1-10. The new annuity is payable the first day of the month following the member's re-retirement.

**SECTION 8. 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.

**SECTION 9. AMENDMENT.** Subsection 11 of section 15-39.1-24 of the North Dakota Century Code is amended and reenacted as follows:

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 eligible rollovers, direct rollovers, and trustee-to-trustee transfers from eligible retirement plans specified under Internal Revenue Code section 402(c)(8)(B) to purchase refunded service credit under section 15-39.1-15 and to purchase additional service credit under section 15-39.1-24. The board shall adopt rules to ensure that the rollovers and transfers comply with the requirements of the Internal Revenue Code and internal revenue service regulations. The total amount rolled over or transferred into the fund may not exceed the amount due to purchase service credit.~~

**SECTION 10.** A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

**Employer service purchases.** A participating employer may purchase additional service credit on behalf of a member under the following conditions:

1. The member may not be given the option to choose between an employer service purchase and an equivalent amount paid in cash.
2. The member must meet one of the following conditions at the time the purchase is made:
  - a. The member's age plus service credit must be equal to or greater than seventy-seven; or

- b. The member's age must be at least fifty-five and the member must have at least three years of service credit.
- 3. The board must determine the purchase price on an actuarially equivalent basis.
- 4. The purchase must be completed before the member's retirement.
- 5. The employer may purchase a maximum of three years of service credit on behalf of the member.
- 6. The employer must pay the purchase price for the service credit purchased under this section in a lump sum.

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

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

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

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

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2057.

Senate Vote:    Yeas    47        Nays    0        Absent    0

House Vote:    Yeas    92        Nays    0        Absent    2

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2003,

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

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