

Sixty-first  
Legislative Assembly  
of North Dakota

Introduced by

(At the request of the Teachers' Fund for Retirement)

1 A BILL for an Act to amend and reenact sections 15-39.1-04(9), 15-39.1-10(4), 15-39.1-10.6,  
2 15-39.1-19.1(1), 15-39.1-20, and 15-39.1-30 of the North Dakota Century Code, relating to  
3 incorporation of federal law changes, procedure relating to benefit limitations, annual hour limit  
4 for retiree reemployment, and disclosure of confidential records under the teachers' fund for  
5 retirement.

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

7 **SECTION 1. AMENDMENT.** Section 15-39.1-04(9) is amended:

- 8 9. "Salary" means a member's earnings in eligible employment under this chapter for  
9 teaching, supervisory, administrative, and extracurricular services during a school  
10 year reported as salary on the member's federal income tax withholding  
11 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.  
12 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on ~~July~~ August 1, 2007 2009.  
13 "Salary" includes bonus amounts paid to members for performance, retention,  
14 experience, and other service-related bonuses, unless amounts are conditioned on  
15 or made in anticipation of an individual member's retirement or termination. The  
16 annual salary of each member taken into account in determining benefit accruals  
17 and contributions may not exceed the annual compensation limits established  
18 under 26 U.S.C. 401(a)(17)(B) in effect on ~~July~~ August 1, 2007 2009, as adjusted  
19 for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in  
20 effect on ~~July~~ August 1, 2007 2009. A salary maximum is not applicable to  
21 members whose participation began before July 1, 1996. "Salary" does not  
22 include:
- 23 a. Fringe benefits or side, nonwage, benefits that accompany or are in addition  
24 to a member's employment, including insurance programs, annuities,

- 1 transportation allowances, housing allowances, meals, lodging, or expense  
2 allowances, or other benefits provided by a member's employer.
- 3 b. Insurance programs, including medical, dental, vision, disability, life, long-term  
4 care, workforce safety and insurance, or other insurance premiums or  
5 benefits.
- 6 c. Payments for unused sick leave, personal leave, vacation leave, or other  
7 unused leave.
- 8 d. Early retirement incentive pay, severance pay, or other payments conditioned  
9 on or made in anticipation of retirement or termination.
- 10 e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- 11 f. Amounts received by a member in lieu of previously employer-provided  
12 benefits or payments that are made on an individual selection basis.
- 13 g. Recruitment bonuses.
- 14 h. Other benefits or payments not defined in subdivisions a through g which the  
15 board determines to be ineligible teachers' fund for retirement salary.

16 **SECTION 2. AMENDMENT.** Section 15-39.1-10(4) is amended:

- 17 4. Retirement benefits must begin no later than April first of the calendar year  
18 following the year the member attains age seventy and one-half or April first of the  
19 calendar year following the year the member terminates covered employment,  
20 whichever is later. Payments must be made over a period of time which does not  
21 exceed the life expectancy of the member or the joint life expectancy of the  
22 member and the beneficiary. Payment of minimum distributions must be made in  
23 accordance with section 401(a)(9) of the Internal Revenue Code in effect on ~~July~~  
24 August 1, 2007 2009, and the regulations issued under that section, as applicable  
25 to governmental plans.

26 **SECTION 3. AMENDMENT.** Section 15-39.1-10.6 is amended:

27 **15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating  
28 under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum  
29 benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on  
30 ~~July~~ August 1, 2007 2009, for governmental plans. The maximum dollar benefit applicable  
31 under section 415(b)(1)(A) of the Internal Revenue Code must reflect any increases in this

1 amount provided under section 415(d) of the Internal Revenue Code subsequent to August 1,  
2 2009. If a member's benefit is limited by these provisions at the time of retirement or in any  
3 subsequent year, the benefit paid in any following calendar year may be increased to reflect all  
4 cumulative increases in the maximum dollar limit provided under section 415(d) of the Internal  
5 Revenue Code for years after the year payments commenced, but not to more than would have  
6 been payable in the absence of the limits under section 415 of the Internal Revenue Code. If  
7 an annuitant's benefit is increased by a plan amendment, after the commencement of  
8 payments, the member's benefit may not exceed the maximum dollar benefit under section  
9 415(b)(1)(A) of the Internal Revenue Code, adjusted for the commencement age and form of  
10 payment, increased as provided by section 415(d) of the Internal Revenue Code. If this plan  
11 must be aggregated with another plan to determine the effect of section 415 of the Internal  
12 Revenue Code on a member's benefit, and if the benefit must be reduced to comply with  
13 section 415 of the Internal Revenue Code, then the reduction must be made pro rata between  
14 the two plans, in proportion to the member's service in each plan.

15 **SECTION 4. AMENDMENT.** Section 15-39.1-19.1(1) is amended:

- 16 1. a. Except as otherwise provided in section 15-39.1-19.2, a retired teacher who is  
17 receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may  
18 not return to covered employment until thirty calendar days have elapsed from  
19 the member's retirement date. A retired member may then return to covered  
20 employment under an annual hour limit and continue receiving a monthly  
21 retirement benefit. The annual hour limit is based on the length of the  
22 reemployed retiree's contract as follows:
- 23 a. (1) Retiree reemployment of nine months or less, annual limit is seven  
24 hundred hours;
- 25 b. (2) Retiree reemployment of ten months, annual limit is eight hundred  
26 hours;
- 27 e. (3) Retiree reemployment of eleven months, annual limit is nine hundred  
28 hours; or
- 29 e. (4) Retiree reemployment of twelve months, annual limit is one thousand  
30 hours.

- 1           **b.** Employment as a noncontracted substitute teacher does not apply to the  
2           annual hour limit. Professional development and extracurricular duties do not  
3           apply to the annual hour limit.
- 4           **c.** The retired member and the retired member's employer must notify the fund  
5           office in writing within thirty days of the retired member's return to covered  
6           employment. Should the retired member's employment exceed the annual  
7           hour limit, the retired member must immediately notify the fund office in  
8           writing. Failure to notify the fund office results in the loss of one month's  
9           annuity benefit. The retired member's monthly benefit must be discontinued  
10          the first of the month following the date the member reaches the annual hour  
11          limit.
- 12          **d.** A retired member who returns to teaching shall pay the member contributions  
13          required by section 15-39.1-09 on those earnings received by the retired  
14          member after reaching the annual hour limit.
- 15          **e.** A participating employer who employs a retired member under this section  
16          shall pay the employer contributions required by section 15-39.1-09 on the  
17          salary of the retired member both before and after the retired member  
18          reaches the annual hour limit.

19           **SECTION 5. AMENDMENT.** Section 15-39.1-20 is amended:

20           **15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible  
21          under the terms of this chapter to participate in the fund, the member may, after a period of one  
22          hundred twenty days, withdraw from the fund and is then entitled to receive a refund of  
23          assessments accumulated with interest. The one-hundred-twenty-day requirement may be  
24          waived by the board when it has evidence the teacher will not be returning to teach in North  
25          Dakota. The refund is in lieu of any other benefits to which the member may be entitled under  
26          the terms of this chapter, and by accepting the refund, the member is waiving any right to  
27          participate in the fund under the same provisions that existed at the time the refund was  
28          accepted regardless of whether the member later repurchases refunded service credit. A  
29          member may elect, at the time and under rules adopted by the board, to have any portion of an  
30          eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan

1 specified by the member as allowed under section 401(a)(31) of the Internal Revenue Code in  
2 effect on ~~July~~ August 1, 2007 2009.

3 **SECTION 6. AMENDMENT.** Section 15-39.1-30 is amended:

4 **15-39.1-30. Confidentiality of records.** All records relating to the retirement benefits  
5 of a member or a beneficiary under this chapter are confidential and are not public records.

6 The information and records may be disclosed, under rules adopted by the board, only to:

- 7 1. A person to whom the teacher has given written consent to have the information  
8 disclosed.
- 9 2. A person legally representing the teacher, upon proper proof of representation, and  
10 unless the teacher specifically withholds consent.
- 11 3. A person authorized by a court order.
- 12 4. A member's participating employer, limited to information concerning the member's  
13 years of service credit, years of age, employer and employee contribution  
14 amounts, and salary. The board may share other types of information as needed  
15 by the employer to validate the employer's compliance with existing state or federal  
16 law. Any information provided to the member's participating employer under this  
17 subsection must remain confidential except as provided in subsection 6.
- 18 5. The administrative staff of the public employees retirement system for purposes  
19 relating to membership and benefits determination.
- 20 6. State or federal agencies for the purpose of validating member eligibility or  
21 employer compliance with existing state or federal law.
- 22 7. Member interest groups approved by the board, limited to information concerning  
23 the member's death.
- 24 8. A government child support enforcement agency for purposes of establishing  
25 paternity or establishing, modifying, or enforcing a child support obligation of the  
26 member.
- 27 9. The member's spouse or former spouse, that individual's legal representative, and  
28 the judge presiding over the member's dissolution proceeding for purposes of  
29 aiding the parties in drafting a qualified domestic relations order under section  
30 15-39.1-12.2. The information disclosed under this subsection must be limited to  
31 information necessary for drafting the order.

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