

**HOUSE BILL NO. 1133**

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, subsection 4  
2 of section 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-17, and 15-39.1-20 of the North  
3 Dakota Century Code, relating to definitions of beneficiary and salary, incorporation of federal  
4 law changes, and modification of death and beneficiary provisions under the teachers' fund for  
5 retirement.

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

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

9 2. "Beneficiary" means ~~the~~ a person, estate, trust, or organization designated in writing by  
10 ~~the member except that in the absence of such designation, if the member is married,~~  
11 ~~the member's spouse must be the primary beneficiary. If the member is married, and if~~  
12 ~~the member wishes to name an alternate beneficiary, the member's spouse must~~  
13 ~~consent in writing to the member's designation. If the member dies without having~~  
14 ~~named a contingent beneficiary to receive any remaining benefits due after the death~~  
15 ~~of the beneficiary, the primary beneficiary may name a contingent beneficiary~~  
16 participating member to receive benefits provided by this plan, in receipt of benefits, or  
17 otherwise provided under section 15-39.1-17.

18 9. "Salary" means a member's earnings in eligible employment under this chapter for  
19 teaching, supervisory, administrative, and extracurricular services during a school year  
20 reported as salary on the member's federal income tax withholding statements plus  
21 any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k),  
22 403(b), 414(h), or 457 in effect on August 1, ~~2009~~2011. "Salary" includes ~~bonus-~~  
23 ~~amounts paid to members for performance, retention, experience, and other~~  
24 ~~service-related bonuses~~ of duties, unless amounts are conditioned on or made in

1 anticipation of an individual member's retirement or termination. The annual salary of  
2 each member taken into account in determining benefit accruals and contributions  
3 may not exceed the annual compensation limits established under 26 U.S.C. 401(a)  
4 (17)(B) in effect on August 1, ~~2009~~2011, as adjusted for increases in the cost of living  
5 in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1, ~~2009~~2011. A salary  
6 maximum is not applicable to members whose participation began before July 1, 1996.

7 "Salary" does not include:

- 8 a. Fringe benefits or side, nonwage, benefits that accompany or are in addition to a  
9 member's employment, including insurance programs, annuities, transportation  
10 allowances, housing allowances, meals, lodging, or expense allowances, or other  
11 benefits provided by a member's employer.
- 12 b. Insurance programs, including medical, dental, vision, disability, life, long-term  
13 care, workforce safety and insurance, or other insurance premiums or benefits.
- 14 c. Payments for unused sick leave, personal leave, vacation leave, or other unused  
15 leave.
- 16 d. Early retirement incentive pay, severance pay, or other payments conditioned on  
17 or made in anticipation of retirement or termination.
- 18 e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- 19 f. Amounts received by a member in lieu of previously employer-provided benefits  
20 or payments that are made on an individual selection basis.
- 21 g. ~~Recruitment~~Signing bonuses as defined under section 15.1-09-33.1.
- 22 h. Other benefits or payments not defined in ~~subdivisions a through g~~this section  
23 which the board determines to be ineligible teachers' fund for retirement salary.

24 **SECTION 2. AMENDMENT.** Subsection 4 of section 15-39.1-10 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26 4. Retirement benefits must begin no later than April first of the calendar year following  
27 the year the member attains age seventy and one-half or April first of the calendar  
28 year following the year the member terminates covered employment, whichever is  
29 later. Payments must be made over a period of time which does not exceed the life  
30 expectancy of the member or the joint life expectancy of the member and the  
31 beneficiary. Payment of minimum distributions must be made in accordance with

1 section 401(a)(9) of the Internal Revenue Code in effect on August 1, ~~2009~~2011, and  
2 the regulations issued under that section, as applicable to governmental plans.

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

5 **15-39.1-10.6. Benefit limitations.**

6 Benefits with respect to a member participating under former chapter 15-39 or chapter  
7 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the  
8 Internal Revenue Code [26 U.S.C. 415] in effect on August 1, ~~2009~~2011, for governmental  
9 plans. The maximum dollar benefit applicable under section 415(b)(1)(A) of the Internal  
10 Revenue Code must reflect any increases in this amount provided under section 415(d) of the  
11 Internal Revenue Code subsequent to August 1, ~~2009~~2011. If a member's benefit is limited by  
12 these provisions at the time of retirement or in any subsequent year, the benefit paid in any  
13 following calendar year may be increased to reflect all cumulative increases in the maximum  
14 dollar limit provided under section 415(d) of the Internal Revenue Code for years after the year  
15 payments commenced, but not to more than would have been payable in the absence of the  
16 limits under section 415 of the Internal Revenue Code. If an annuitant's benefit is increased by  
17 a plan amendment, after the commencement of payments, the member's benefit may not  
18 exceed the maximum dollar benefit under section 415(b)(1)(A) of the Internal Revenue Code,  
19 adjusted for the commencement age and form of payment, increased as provided by section  
20 415(d) of the Internal Revenue Code. If this plan must be aggregated with another plan to  
21 determine the effect of section 415 of the Internal Revenue Code on a member's benefit, and if  
22 the benefit must be reduced to comply with section 415 of the Internal Revenue Code, then the  
23 reduction must be made pro rata between the two plans, in proportion to the member's service  
24 in each plan.

25 **SECTION 4. AMENDMENT.** Section 15-39.1-17 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **15-39.1-17. Death of member.**

28 1. ~~If the death of a member who has not acquired a vested interest should occur prior to~~  
29 ~~retirement, a refund of the member's assessments accumulated with interest must be~~  
30 ~~made to the member's beneficiary, or, if there is no beneficiary, the same must be paid~~  
31 ~~to the surviving children, or if none, to the member's estate; provided, however, that if~~

1           no probate proceedings have been instituted within thirty days of the death of the  
2           member, then to the heirs at law who file claim with the fund within one hundred fifty  
3           days of the death of the member.

4           2. If the death of a member who has acquired a vested interest should occur prior to  
5           retirement, then the member's beneficiary may apply for a refund of the member's  
6           assessments accumulated with interest. If there is no beneficiary, then the same must  
7           be paid to the surviving children, or if none, to the member's estate; provided,  
8           however, that if no probate proceedings have been instituted within thirty days of the  
9           death of the member, then to the heirs at law who file claim with the fund within one  
10          hundred fifty days of the death of the member. In lieu of a refund, the beneficiary may  
11          elect either to receive a monthly annuity in accordance with option one under section  
12          15-39.1-16, with the amount of the annuity being determined as though the deceased  
13          member had retired under the option on the day benefits commence to the beneficiary;  
14          or the beneficiary may elect to receive for sixty months an amount equal to the  
15          monthly annuity the member would have received if the member had attained age  
16          sixty-five and retired, based on the member's credited service to date of death. If any  
17          member under this section has not paid into the fund assessments equal to the  
18          amounts required to be paid under section 15-39.1-09, the applicant shall pay any  
19          deficiency into the fund before receiving the annuity.

20          3. If a member who has received annuity payments other than a reduced retirement  
21          allowance as provided in section 15-39.1-16 dies prior to receiving accumulated  
22          annuity payments which exceed the assessments paid by the member to the fund plus  
23          interest, or a member who has elected a reduced retirement allowance under option  
24          one or two in section 15-39.1-16 dies and the person who was nominated to receive  
25          that member's reduced allowance also dies prior to receiving, together, accumulated  
26          annuity payments which exceed the assessments paid by the member to the fund plus  
27          interest, the member's beneficiary shall receive a final payment equal to the  
28          assessments the member paid to the fund plus interest as provided in section  
29          15-39.1-20 less the amount of the annuity payments made. A member may designate a  
30          beneficiary to receive death benefits under the plan if the member dies. If the member  
31          is not married, the member may designate a person, estate, or organization as primary

1 beneficiary to receive death benefits. If the member is married, the spouse of the  
2 member is the member's primary beneficiary unless the spouse consents in writing to  
3 the member's alternate primary beneficiary designation. A member also may designate  
4 contingent beneficiaries who are entitled to any remaining death benefits if the primary  
5 beneficiary dies before receiving all death benefits provided by this plan. If a member  
6 dies without naming a contingent beneficiary, the primary beneficiary may name a  
7 contingent beneficiary. If there is no named primary or contingent beneficiary, any  
8 death benefits will be paid to the estate.

9 2. If a member has named more than one primary beneficiary, the board shall pay any  
10 death benefits to the primary beneficiaries in the percentages designated by the  
11 member or, if the member has not designated a percentage for the beneficiaries, in  
12 equal percentages. If one or more of the primary beneficiaries has predeceased the  
13 member, the board shall pay the predeceased beneficiary's share to the remaining  
14 primary beneficiaries. If no primary beneficiaries remain, any death benefits must be  
15 paid to the contingent beneficiaries in the same manner.

16 a. If before retiring a nonvested member dies, the plan shall pay the member's  
17 account value to the member's beneficiary.

18 b. If before retiring a vested member dies, the member's beneficiary may select a  
19 form of payment as follows:

20 (1) If the member dies and was eligible for unreduced retirement benefits and if  
21 the beneficiary is one person, the beneficiary may select:

22 (a) A lump sum payment of the member's account value; or

23 (b) A lifetime monthly annuity effective on the first of the month following  
24 the month of the member's death. The amount of the monthly annuity  
25 is equal to an amount that would have been paid to the beneficiary  
26 under a one hundred percent joint and survivor annuity. If the  
27 beneficiary dies before receiving the guaranteed member account  
28 value, any remaining balance must be paid in a lump sum to a named  
29 contingent beneficiary, or if none, to the estate of the recipient.

30 (2) If the member dies and was not eligible for unreduced retirement benefits  
31 and if the beneficiary is one person, the beneficiary may select:

- 1                   (a) A lump sum payment of the member's account value; or  
2                   (b) A lifetime monthly annuity effective on the first of the month following  
3                   the month of the member's death. The amount of the monthly annuity  
4                   is equal to an amount that would have been paid to the beneficiary  
5                   under a one hundred percent joint and survivor annuity without  
6                   reduction for early retirement and using the disability option reduction  
7                   factor. If the beneficiary dies before receiving the guaranteed member  
8                   account value, any remaining balance must be paid in a lump sum to  
9                   a named contingent beneficiary, or if none, to the estate of the  
10                   recipient.
- 11                   (3) If the member dies and multiple beneficiaries are eligible for death benefits,  
12                   the plan shall pay the member's account value to the member's  
13                   beneficiaries.
- 14                   c. If a member or beneficiary receiving benefits under this plan dies before the total  
15                   amount of benefits paid to either or both equals the amount of the member's  
16                   account value, the difference must be paid in a lump sum to a named beneficiary,  
17                   or if none, to the estate of the recipient.

18                   **SECTION 5. AMENDMENT.** Section 15-39.1-20 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20                   **15-39.1-20. Withdrawal from fund.**

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

Sixty-second  
Legislative Assembly

- 1 member ~~as allowed under~~ the beneficiary to the extent permitted by section 401(a)(31) of the
- 2 Internal Revenue Code in effect on August 1, ~~2009~~2011.