

## **CHAPTER 15-39.1**

### **TEACHERS' FUND FOR RETIREMENT**

#### **15-39.1-01. Teachers' fund for retirement created.**

There is hereby created the teachers' fund for retirement, which, upon the effective date of this chapter shall consist of the following:

1. All moneys contained in the teachers' insurance and retirement fund accumulated pursuant to chapter 15-39; and
2. All moneys thereafter received by the state treasurer under the provisions of this chapter.

#### **15-39.1-02. Prior fund terminated.**

The teachers' insurance and retirement fund shall, on July 1, 1971, cease to exist and the board administering said fund shall no longer function. All obligations of the teachers' insurance and retirement fund must be assumed by the newly created fund.

#### **15-39.1-03. Rights under prior chapter preserved.**

No person may be caused to be deprived of rights vested under the chapter superseded hereby. Any such person may elect to claim the person's retirement benefits according to the provisions of the retirement program for teachers in effect prior to July 1, 1971.

#### **15-39.1-04. Definitions.**

For purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Actuarial equivalent" means the amount calculated to be of equal actuarial value to the benefit otherwise payable when computed on the basis of actuarial assumptions and methods adopted by the board.
2. "Beneficiary" means a person, estate, trust, or organization designated in writing by a participating member to receive benefits provided by this plan, in receipt of benefits, or otherwise provided under section 15-39.1-17.
3. "Board" means the board of trustees of the teachers' fund for retirement.
4. "Contract" means a written agreement with a school board or other governing body of a school district or special education unit of this state or a letter of appointment by a state institution, state agency, or other employer participating in the fund.
5. "Fund" means the teachers' fund for retirement.
6. "Interest" as applied to member assessments is an annual rate of six percent compounded monthly and as applied to the repurchase of credit for withdrawn years is six percent compounded annually.
7. "Normal retirement age" means the age at which a member becomes eligible for monthly lifetime normal unreduced retirement benefits as provided in subsection 1 of section 15-39.1-10.
8. "Retirement" means cessation of covered employment and acceptance of a benefit under former chapter 15-39, or chapter 15-39.1 or 15-39.2.
9. "Retirement annuity" means the payments made by the fund to a member after retirement.
10. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a plan 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, as amended. "Salary" includes amounts paid to members for performance of duties, 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, as adjusted for increases in the cost of living in accordance with 26 U.S.C.

401(a)(17)(B), as amended. A salary maximum is not applicable to members whose participation began before July 1, 1996. "Salary" does not include:

- 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, workforce safety and insurance, 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, bus driver 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. Signing bonuses as defined under section 15.1-09-33.1.
  - h. Other benefits or payments not defined in this section which the board determines to be ineligible teachers' fund for retirement salary.
11. "State institution" includes North Dakota vision services - school for the blind, the school for the deaf, and the North Dakota youth correctional center.
12. "Teacher" means:
- a. All persons licensed by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services by a state institution, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers. For purposes of this subdivision, "teacher" includes persons contractually employed by one of the above employers to provide teaching, supervisory, administrative, or extracurricular services to a separate state institution, state agency, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state under a third-party contract.
  - b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the department of career and technical education, the professional staff of the center for distance education, the executive director and professional staff of North Dakota united who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
  - c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on July 1, 1995, and licensed staff of teachers centers, but only if the person was previously a member of and has credits in the fund.
  - d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.
13. "Tier one grandfathered member" for purposes of sections 15-39.1-10 and 15-39.1-12 means a tier one member who, as of June 30, 2013, is vested as a tier one member in accordance with section 15-39.1-11; and
- a. Is at least fifty-five years of age; or
  - b. Has a combined total of years of service credit in the plan and years of age which equals or exceeds sixty-five.
14. "Tier one member" means a teacher who has credit in the system on July 1, 2008, and has not taken a refund pursuant to section 15-39.1-20 after June 30, 2008.

15. "Tier one nongrandfathered member" for purposes of sections 15-39.1-10 and 15-39.1-12 means a tier one member who does not qualify as a tier one grandfathered member.
16. "Tier two member" means a teacher who is not a tier one member.

**15-39.1-05. Management of fund.**

Repealed by S.L. 1997, ch. 170, § 4.

**15-39.1-05.1. Board composition - Terms - Voting.**

1. The authority to set policy for the fund rests in a board of trustees composed as follows:
  - a. The governor shall appoint, from a list of three nominees submitted to the governor by North Dakota united, two board members who are actively employed as elementary or secondary teachers in full-time positions not classified as school administrators. A board member appointed under this subdivision who terminates employment may not continue to serve as a member of the board.
  - b. The governor shall appoint, from a list of three nominees submitted to the governor by the North Dakota council of educational leaders, one board member who is actively employed as a full-time school administrator. A board member appointed under this subdivision who terminates employment may not continue to serve as a member of the board.
  - c. The governor shall appoint, from a list of three nominees submitted to the governor by the North Dakota retired teachers association, two board members who are the retired members of the fund.
  - d. The state treasurer, or a designee from the office of state treasurer, and the superintendent of public instruction, or a designee from the department of public instruction.
2. All current appointees of the board shall serve the remainder of their terms as members of the board until their terms expire and their successors are appointed. The first newly appointed board member under subdivision a of subsection 1 must be appointed to serve an initial term of four years. The first newly appointed board member under subdivision c of subsection 1 must be elected to serve an initial term of five years. Newly appointed board members shall serve a term of five years. Each newly appointed term begins on July first.
3. Each board member is entitled to one vote, and four members constitute a quorum. Four votes are required for resolution or action by the board.

**15-39.1-05.2. Board authority - Continuing appropriation.**

The board:

1. Has the powers and privileges of a corporation, including the right to sue and be sued in its own name. The venue of all actions to which the board is a party must be Burleigh County.
2. Shall establish investment policy for the trust fund under section 21-10-02.1. The investment policy must include:
  - a. Acceptable rates of return, liquidity, and levels of risk; and
  - b. Long-range asset allocation targets.
3. Shall arrange for actuarial and medical consultants. The board shall cause a qualified, competent actuary to be retained on a consulting basis. The actuary shall:
  - a. Make a valuation of the liabilities and reserves of the fund and a determination of the contributions required by the fund to discharge its liabilities and pay administrative costs;
  - b. Recommend to the board rates of employer and employee contributions required, based upon the entry age normal cost or other accepted actuarial method, to maintain the fund on an actuarial reserve basis;

- c. Once every five years make a general investigation of the actuarial experience under the fund, including mortality, retirement, employment turnover, and other items required by the board;
  - d. Recommend actuarial tables for use in valuations and in calculating actuarial equivalent values based on the investigation provided for in subdivision c; and
  - e. Perform other duties assigned by the board.
- 4. May pay benefits and consultant fees as necessary which are hereby appropriated from the fund.
  - 5. Shall submit to the legislative management's employee benefits programs committee any necessary or desirable changes in statutes relating to the administration of the fund.
  - 6. Shall determine appropriate levels of service to be provided to members, including benefits counseling and preretirement programs.
  - 7. Shall inform the state investment board, which is the administrative board of the retirement and investment office, the levels of services, goals, and objectives expected to be provided through the retirement and investment office.

**15-39.1-06. Organization of board.**

The board may hold meetings as necessary for the transaction of business and a meeting may be called by the president or any two members of the board upon reasonable notice to the other members of the board. The president for the ensuing year must be elected at the first meeting following July first of each year.

**15-39.1-07. Vacancies - Rulemaking power.**

Vacancies which may occur among the appointed members of the board must be filled by the governor and the appointee shall complete the term for which the original member was selected. The board may adopt such rules as may be necessary to fulfill the responsibilities of the board.

**15-39.1-08. Compensation of members.**

Members of the board, excluding ex officio members, are entitled to receive one hundred forty-eight dollars as compensation per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the board. No member of the board may lose regular salary, vacation pay, vacation or any personal leave, or be denied right of attendance by the state or political subdivision thereof while serving on official business of the fund.

**15-39.1-09. Membership in fund and assessments - Employer payment of employee contribution. (Contingent expiration date - [See note](#))**

- 1. Except as otherwise provided by law, every teacher is a member of the fund and must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Member contributions increase to nine and seventy-five hundredths percent per annum beginning July 1, 2012, and increase thereafter to eleven and seventy-five hundredths percent per annum beginning July 1, 2014. Except as otherwise provided by law, every governmental body employing a teacher shall pay to the fund eight and seventy-five hundredths percent per annum of the salary of each teacher employed by it. Contributions to be paid by a governmental body employing a teacher increase to ten and seventy-five hundredths percent per annum beginning July 1, 2012, and increase thereafter to twelve and seventy-five hundredths percent per annum beginning July 1, 2014. The required amount of member and employer contributions must be reduced to seven and seventy-five hundredths percent per annum effective on the July first that follows the first valuation showing a ratio of the actuarial value of assets to the actuarial accrued liability of the teachers' fund for retirement that is equal

to or greater than one hundred percent. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

2. Each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 1983. The amount paid must be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.
3. A person, except the superintendent of public instruction, who is certified to teach in this state by the education standards and practices board and who is first employed and entered upon the payroll of the superintendent of public instruction after January 6, 2001, may elect to become a participating member of the public employees retirement system. An election made by a person to participate in the public employees retirement system under this subsection is irrevocable. Nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, may elect to transfer to the public employees retirement system pursuant to section 54-52-02.13. Employees of the state board for career and technical education may elect to transfer to the public employees retirement system pursuant to section 54-52-02.14.
4. An individual who is first employed and entered upon the payroll of the state board for career and technical education after July 1, 2007, may elect to become a participating member of the public employees retirement system. An election made by an individual to participate in the public employees retirement system under this subsection is irrevocable.

#### **15-39.1-09.1. Participation of nonpublic schoolteachers.**

Repealed by S.L. 1993, ch. 191, § 3.

#### **15-39.1-10. Eligibility for normal retirement benefits.**

1. The following members who have acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 are eligible to receive monthly lifetime normal unreduced retirement benefits under this section:
  - a. All tier one and tier two members who have attained the age of sixty-five years.
  - b. All tier one grandfathered members who have a combined total of years of service credit and years of age which equals or exceeds eighty-five.
  - c. All tier one nongrandfathered members and tier two members who are at least sixty years of age and who have a combined total of years of service credit and years of age which equals or exceeds ninety.
2. The amount of retirement benefits is two percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary for a tier one member means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service credit under the fund. For purposes of this subsection, final average

monthly salary for a tier two member means one sixtieth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any five years of service credit under the fund.

3. Notwithstanding any other provision of this section, no member who retired on July 1, 1993, or after and is eligible to receive benefits under former chapter 15-39, chapter 15-39.1, or section 15-39.2-02, may receive benefits which are less than:
  - a. Ten dollars per month per year of teaching to twenty-five years.
  - b. Fifteen dollars per month per year of teaching over twenty-five years.
4. 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 [26 U.S.C. 401(a)(9)], as amended, and the regulations issued under that section, as applicable to governmental plans.

#### **15-39.1-10.1. Postretirement adjustments.**

Every person receiving monthly benefits from the fund on an account on which benefits were being paid on June 30, 1983, shall receive an increase in benefits beginning July 1, 1983, equal to fifteen percent of the person's present annuity. The percentage must be adjusted, if necessary, so that the maximum increase would be no more than forty-five dollars per month. The fifteen percent increase in benefits must be adjusted in percentage so that no person receives less than one dollar per month per year of teaching credit.

#### **15-39.1-10.2. Postretirement adjustments.**

Every person receiving monthly benefits from the fund on an account on which benefits were being paid on June 30, 1985, shall receive an increase in benefits beginning July 1, 1985, equal to one percent for each year the person has been retired under the fund. No member may receive more than a ten percent or more than a forty dollar per month increase in benefits under this section.

#### **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, except an "eligible employee" as that term is defined under section 54-52-02.15.
    - (2) The highway patrol troopers' 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 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 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. 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.
    - (1) A tier one member 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:

- (a) 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
  - (b) 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 tier two member 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:
  - (a) Using the five highest certified fiscal year salaries of this plan in the computation of final average salary and all service credit earned in this plan; or
  - (b) Using the five 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 eligible to participate in this fund, is also eligible to participate in an alternate retirement system, 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 shall pay the member and employer contributions at the rates currently existing for the applicable 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.

#### **15-39.1-10.4. Postretirement adjustments.**

An individual who, on June 30, 1987, is receiving benefits from the fund on an account paid under former chapter 15-39 is entitled to a monthly increase in that individual's annuity. The monthly increase is fifteen dollars plus one dollar and fifty cents for every year benefits have been drawn from the fund, but cannot exceed an increase of seventy-five dollars per month. An individual who, on June 30, 1987, is receiving benefits from the fund on an account paid under this chapter is entitled to a monthly increase of one dollar and fifty cents for every year benefits have been drawn from the fund.

#### **15-39.1-10.5. Postretirement adjustments.**

An individual who on June 30, 1989, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive an increase in benefits equal to five cents times the individual's number of years of service credit under the fund times the number of years the individual has drawn benefits from the fund.

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

**15-39.1-10.7. Postretirement adjustments.**

An individual who on June 30, 1991, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive three dollars per month multiplied by the individual's number of years of credited service for individuals who retired before 1980, two dollars per month multiplied by the individual's number of years of credited service for individuals who retired after 1979 and before 1984, or one dollar per month multiplied by the individual's number of years of credited service for individuals who retired after 1983 and who retire before July 1, 1991, or an increase of ten percent in the individual's currently payable annuity, whichever is greater. The minimum monthly increase under this section is five dollars and the maximum monthly increase under this section is seventy-five dollars.

**15-39.1-10.8. Postretirement adjustments.**

An individual who on June 30, 1993, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive three dollars per month multiplied by the individual's number of years of credited service for individuals who retired before 1980, two dollars and fifty cents per month multiplied by the individual's number of years of credited service for individuals who retired after 1979 and before 1984, or one dollar per month multiplied by the individual's number of years of credited service for individuals who retired after 1983 and who retire before July 1, 1993, or an increase of ten percent in the individual's currently payable annuity, whichever is greater. The minimum monthly increase under this section is five dollars and the maximum monthly increase under this section is one hundred dollars.

**15-39.1-10.9. Postretirement adjustment.**

An individual who on June 30, 1997, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive an increase of thirty dollars per month.

**15-39.1-10.10. Postretirement adjustment.**

An individual who on June 30, 1999, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a monthly increase equal to an amount determined by taking two dollars per month multiplied by the



member's number of years of service credit plus one dollar per month multiplied by the number of years since the member's retirement.

**15-39.1-10.11. Postretirement adjustments.**

An individual who on June 30, 2001, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a monthly increase equal to an amount determined by taking two dollars per month multiplied by the member's number of years of service credit plus one dollar per month multiplied by the number of years since the member's retirement. In addition, an individual who is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a seventy-five hundredths of one percent increase of the individual's current monthly benefit with the increased benefit payable each month thereafter beginning on July 1, 2001. An individual who on June 30, 2002, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a seventy-five hundredths of one percent increase of the individual's current monthly benefit with the increased benefit payable each month thereafter beginning on July 1, 2002. This annual benefit adjustment is conditioned on an actuarial test performed annually by the board's actuarial consultant to determine the actuarial adequacy of the statutory contribution rate. The board shall report the results of the actuarial test annually to the employee benefits programs committee. If the actuarial valuation indicates a shortfall between the actuarially determined benchmark contribution rate and the statutory rate, the board may reduce or suspend the conditional annual benefit adjustment. The actuarial adequacy test fails if one or more of the following are true:

1. The shortfall is greater than six-tenths of one percent in any year; or
2. The shortfall is greater than three-tenths of one percent in any two consecutive years.

**15-39.1-10.12. Supplemental retiree benefit payment.**

An individual who retired before January 1, 2009, and is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 on December 1, 2009, is entitled to receive a supplemental payment from the fund. The supplemental payment is equal to an amount determined by taking twenty dollars multiplied by the member's number of years of service credit plus fifteen dollars multiplied by the number of years since the member's retirement as of January 1, 2009. The supplemental payment may not exceed the greater of ten percent of the member's annual annuity or seven hundred fifty dollars. The board shall make the supplemental payment in December 2009.

**15-39.1-11. Vesting of rights.**

When a tier one member has earned three years of service credit 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. When a tier two member has earned five years of service credit 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. When a tier one or tier two member has attained normal retirement age that member has a vested right to a retirement annuity under this chapter.

**15-39.1-12. Early reduced retirement benefits.**

A member 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 in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced according to the following schedule:

1. All tier one grandfathered member benefits must be reduced by six percent per annum from the earlier of:
  - a. Age sixty-five; or

- b. The age at which the sum of the member's current years of service credit and years of age equals eighty-five.
2. All tier one nongrandfathered member and tier two member benefits must be reduced by eight percent per annum from the earlier of:
  - a. Age sixty-five; or
  - b. The later of:
    - (1) Age sixty; or
    - (2) The age at which the sum of the member's current years of service credit and years of age equals ninety.

**15-39.1-12.1. Partial service retirement.**

Repealed by S.L. 1999, ch. 175, § 9.

**15-39.1-12.2. Benefit payments to alternate payee under domestic relations order.**

1. The board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the board shall notify the teacher and the named alternate payee of its receipt of the qualified domestic relations order.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of the teacher, which is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the teacher. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under the fund, or to provide increased benefits as determined on the basis of actuarial value. However, a qualified domestic relations order may require the payment of benefits at the early retirement date notwithstanding that the teacher has not terminated eligible employment.

**15-39.1-13. Exemptions from legal process.**

Repealed by S.L. 1987, ch. 386, § 2.

**15-39.1-14. Retirement not mandatory.**

Nothing in this chapter may be construed as requiring retirement at any specific age. If the teacher elects to teach beyond age sixty-five, the teacher continues to earn credits at the same rate as prior to the age of sixty-five.

**15-39.1-15. Withdrawal from fund - Return to teaching.**

A teacher who has withdrawn from the fund as set forth in this chapter, by returning to teach in a public school or state institution of this state, may regain service credit for prior teaching by making the required payment. The required payment is the purchase cost on an actuarial equivalent basis. If the teacher returns to teach in covered employment after June 30, 2008, the teacher becomes a tier two member regardless of whether the teacher repurchases service credit earned while the teacher was a tier one member.

**15-39.1-16. Option of teachers eligible to receive annuities.**

1. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

- a. Option one. Upon the death of the teacher, the reduced retirement allowance must be continued throughout the life of, and paid to, the teacher's designated beneficiary named at the time of retirement. If the individual 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 individual designated died before July 1, 1989, must begin on July 1, 1989, or, if the individual designated dies on or after July 1, 1989, must begin on the first day of the month following the death of the individual designated.
  - b. 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 teacher's designated beneficiary named at the time of retirement. If the individual 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 individual designated died before 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 individual designated.
  - c. Option three. Upon the death of the teacher within twenty years of the commencement of annuity payments, the payments must be continued for the remainder of the twenty-year period to the teacher's designated beneficiary. This payment option is available to teachers who retire after July 31, 2003.
  - d. 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 teacher's designated beneficiary.
  - e. Option five. 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 subsection, together with a partial lump sum distribution. 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 subdivision is twelve months of a standard service retirement annuity computed under section 15-39.1-10 and payable at the same time 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 subdivision, 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.
2. 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, shall 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 member'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.

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

1. A member may designate a beneficiary to receive death benefits under the plan when the member dies. If the member is not married, the member may designate a person, estate, or organization as primary beneficiary to receive death benefits. If the member is married, the spouse of the member is the member's primary beneficiary unless the spouse consents in writing to the member's alternate primary beneficiary designation. A member also may designate contingent beneficiaries who are entitled to any remaining death benefits if the primary beneficiary dies before receiving all death benefits provided by this plan. If a member dies without naming a contingent beneficiary, the primary beneficiary may name a contingent beneficiary. If there is no named primary or contingent beneficiary, any death benefits will be paid to the estate.
2. If a member has named more than one primary beneficiary, the board shall pay any death benefits to the primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If no primary beneficiaries remain, any death benefits must be paid to the contingent beneficiaries in the same manner.
  - a. If before retiring a nonvested member dies, the plan shall pay the member's account value to the member's beneficiary.
  - b. If before retiring a vested member dies, the member's beneficiary may select a form of payment as follows:
    - (1) If the member dies and was eligible for unreduced retirement benefits and if the beneficiary is one person, the beneficiary may select:
      - (a) A lump sum payment of the member's account value; or
      - (b) A lifetime monthly annuity effective on the first of the month following the month of the member's death. The amount of the monthly annuity is equal to an amount that would have been paid to the beneficiary under a one hundred percent joint and survivor annuity. If the beneficiary dies before receiving the guaranteed member account value, any remaining balance must be paid in a lump sum to a named contingent beneficiary, or if none, to the estate of the recipient.
    - (2) If the member dies and was not eligible for unreduced retirement benefits and if the beneficiary is one person, the beneficiary may select:
      - (a) A lump sum payment of the member's account value; or
      - (b) A lifetime monthly annuity effective on the first of the month following the month of the member's death. The amount of the monthly annuity is equal to an amount that would have been paid to the beneficiary under a one hundred percent joint and survivor annuity without reduction for early retirement and using the disability option reduction factor. If the beneficiary dies before receiving the guaranteed member account value, any remaining balance must be paid in a lump sum to a named contingent beneficiary, or if none, to the estate of the recipient.
    - (3) If the member dies and multiple beneficiaries are eligible for death benefits, the plan shall pay the member's account value to the member's beneficiaries.
  - c. If a member or beneficiary receiving benefits under this plan dies before the total amount of benefits paid to either or both equals the amount of the member's account value, the difference must be paid in a lump sum to a named beneficiary, or if none, to the estate of the recipient.

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

1. Any member may also retire and receive a disability annuity if, after a period of at least five years of service as a member in this state, the member qualifies for total disability as determined by the board.
2. The amount of the disability annuity is the amount computed by the retirement formula in section 15-39.1-10 without consideration of age. 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 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.

**15-39.1-19. Annuities discontinued on resumption of teaching.**

Repealed by S.L. 1979, ch. 236, § 2.

**15-39.1-19.1. Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit.**

1. a. 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 under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the re-employed retiree's contract as follows:
  - (1) Retiree re-employment of nine months or less, annual limit is seven hundred hours;
  - (2) Retiree re-employment of ten months, annual limit is eight hundred hours;
  - (3) Retiree re-employment of eleven months, annual limit is nine hundred hours; or
  - (4) Retiree re-employment of twelve months, annual limit is one thousand hours.
- b. Employment as a noncontracted substitute teacher, professional development, and extracurricular duties do not apply to the annual hour limit. The fund may not collect contributions for these activities.
- c. The retired member and the retired member's employer must notify the fund office in writing within thirty days of the retired member's return to covered employment.
- d. A retired member who returns to teaching shall pay the member contributions required by section 15-39.1-09 on the salary received by the retired member. The member contributions must be included in the retired member's account value and may not be refunded except as provided under subdivision a of subsection 2 of section 15-39.1-19.1 and section 15-39.1-17.
- e. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member.
- f. A retired teacher who returns to teaching and does not exceed the annual hour limit must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of re-employment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of re-employment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of re-employment, and additional

benefits normally available to an active member, such as disability benefits, are not available to a retired teacher re-employed under this section.

- g. A retired teacher who returns to teaching and exceeds the annual hour limit must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit for the member. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.
2. Upon the subsequent retirement of a member who returns to teach and whose monthly benefit is discontinued, the member's benefit must be resumed as follows:
  - a. The member must have selected the same benefit option as the option selected at initial retirement.
  - b. The member's total benefit upon subsequent retirement must equal the original benefit plus the calculated benefit for the return to work period.
  - c. The member's benefit attributable to any return to work must be based upon service and earnings attributable to the return to work period only and be calculated as follows:
    - (1) The member's calculated benefit must be based on the benefit provisions in effect at subsequent retirement and must include the salary earned during the period of re-employment, total service credits earned after re-employment, and actuarial factors in effect at subsequent retirement.
    - (2) If a member dies during subsequent employment, the member's initial retirement benefit option election applies and the date of death is considered the subsequent retirement date.

#### **15-39.1-19.2. Retired teachers return to active service - Critical shortage areas and disciplines.**

1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher:
  - a. Shall return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board;
  - b. If retired after January 1, 2001, must have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties but may not engage in full-time or part-time teaching duties during the one-year separation from service; and
  - c. Shall notify the fund office in writing within thirty days of the retired member's return to covered employment. The retired member's employer also shall notify the fund office in writing within thirty days of the retired member's return to covered employment.
2. A retired teacher who returns to teaching under this section shall pay the member contributions required by section 15-39.1-09 on the salary of the retired member. The member contributions must be included in the retired member's account value and may not be refunded except as provided under section 15-39.1-17. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of re-employment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of re-employment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of re-employment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher re-employed under this section.
3. A participating employer that employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member.

**15-39.1-19.3. Membership in fund and assessment - Retired military personnel - Exception.**

A teacher may choose not to be a member of the fund and pay the assessment on the teacher's salary under section 15-39.1-09 if the teacher is:

1. Contractually employed in teaching in this state;
2. In the teacher's first year of teaching; and
3. An individual who served at least twenty years in any branch of the armed forces of the United States on full-time active duty and retired with full military retirement benefits before becoming a licensed teacher.

**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, and by accepting the refund, the member is waiving any right to participate in the fund under the same provisions that existed at the time the refund was accepted regardless of whether the member later repurchases refunded service credit. A member or a beneficiary of 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 or the beneficiary to the extent permitted by section 401(a)(31) of the Internal Revenue Code, as amended.

**15-39.1-21. Effect on existing obligations.**

Nothing herein contained may be construed to affect existing retirement benefits and all obligations of the teachers' insurance and retirement fund existing on July 1, 1971, must be assumed and paid from the teachers' fund for retirement. Amounts which persons retired on July 1, 1971, are receiving must be frozen as of that date and may not be deemed increased by this chapter.

**15-39.1-22. Annual audit.**

The board shall conduct an annual audit of the fund for the fiscal year ending the preceding June thirtieth.

**15-39.1-23. Penalties for failure to make required reports and payments.**

Except for unintentional reporting errors, an employing body failing to file reports required by the board or failing to pay over for credit to the fund the amounts required to be paid by this chapter is subject to a civil penalty of two hundred fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the report was required to be filed or the payment became due. The board, if satisfied the delay or underpayment was unintentional and excusable, may waive, or if paid, refund all or part of the two hundred fifty dollar penalty and may reduce the interest rate charge to the investment return rate used in the most recent actuarial valuation, compounded annually, but may not waive the entire amount of the interest. The penalty must be paid to the fund and deposited in the same manner as other receipts under this chapter.

In addition, a school district, multidistrict special education unit, area career and technology center, and regional education association may not share in the apportionment of any money from the state for any year unless the school district, multidistrict special education unit, area career and technology center, or regional education association has made the reports required by the board as permitted by this chapter, and has paid over for credit to the fund the amounts required to be paid under this chapter.

#### **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. 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.
2. 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 purchase military credit for no more than four years of active service, upon filing application and proof with the board.
3. 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. 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 if employed by an agency of the United States government.
6. 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. 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, as amended, 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 eligible rollovers, direct rollovers, and trustee-to-trustee transfers from eligible retirement plans specified under Internal Revenue Code section 402(c)(8)(B), as amended, 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.

12. 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. Except as provided in subsections 4, 6, and 9, the purchase cost must be on an actuarial equivalent basis.

#### **15-39.1-25. Certain rights and obligations fixed.**

Except as otherwise provided in chapter 15-39.2, the laws pertaining to the teachers' fund for retirement, as contained in chapter 15-39.1, apply to teachers, superintendents, assistant superintendents, principals, assistant principals, special teachers, supervisors of instruction and other supervisors, presidents, deans, school librarians, and registrars employed by any state institution under the supervision and control of the state board of higher education and the commissioner of higher education, only in the form and substance as chapter 15-39 existed as of July 1, 1967, and all such persons have only such rights, benefits, and privileges as provided in chapter 15-39 as it existed on July 1, 1967. Such persons are responsible or liable for only those costs or assessments provided for in chapter 15-39 as such laws and chapter existed on July 1, 1967. The state board of higher education or any institution under the supervision or control of the state board of higher education is not liable for any costs, assessments, or payments under the provisions of chapter 15-39 in excess of that provided or required under the provisions of chapter 15-39 as such laws and chapter existed on July 1, 1967. It is hereby declared to be the intent of the legislative assembly to freeze the rights, benefits, privileges, assessments, payments, and obligations of the persons, offices, and institutions specified in this section to those rights, benefits, privileges, assessments, payments, and obligations as they existed under the provisions of chapter 15-39 as such laws and chapter existed in form and substance as of July 1, 1967, and that all legislative enactments subsequent to such date do not affect or apply to those persons, offices, and institutions specified in this section or their rights, benefits, privileges, assessments, payments, and obligations as fixed by this section.

#### **15-39.1-26. Investment of moneys in fund - Interest and earnings attributable to fund.**

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The moneys must be placed for investment only with a firm or firms whose endeavor is money management, and only after a trust agreement or contract has been executed. Investment costs may be paid directly from the fund, and are hereby appropriated for that purpose, in accordance with section 21-10-06.2. All interest and earnings on funds administered by the board must be credited to the fund.

#### **15-39.1-27. Computation of years of service.**

In computing the terms of service of a member under this chapter, a member employed full time who receives compensation for at least seven hundred hours in a fiscal year earns one year of service. A member who receives compensation for less than seven hundred hours of service earns fractional credit equal to the number of compensated hours worked in a fiscal year divided by seven hundred hours. A member may not earn more than one year of service in a fiscal year.

#### **15-39.1-28. Tax levy for teachers' retirement.**

Any school district by a resolution of its school board may use the proceeds of levies, as permitted by section 57-15-14.2, for the purposes of meeting the district's contribution to the fund arising under this chapter and to provide the district's share, if any, of contribution to the fund for contracted employees of either a multidistrict special education board or another school district where the contracted employees are also providing services to the taxing school district.

**15-39.1-29. Fraud against fund - Penalty.**

Any person who knowingly makes a false statement, or falsifies or permits to be falsified any record or records of this retirement fund in any attempt to defraud such fund as a result of such act, is guilty of theft, and is punishable therefor under the laws of the state of North Dakota. Should any change or error in records result in any person receiving from the fund more or less than that person would have been entitled to receive had the records been correct, then, on the discovery of any such error, the board shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such person was correctly entitled is paid.

**15-39.1-30. Confidentiality of records.**

All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the teacher has given written consent to have the information disclosed.
2. A person legally representing the teacher, upon proper proof of representation, and unless the teacher specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit, years of age, employer and employee contribution amounts, and salary. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal law. Any information provided to the member's participating employer under this subsection must remain confidential except as provided in subsection 6.
5. The administrative staff of the public employees retirement system for purposes relating to membership and benefits determination.
6. State or federal agencies for the purpose of validating member eligibility or employer compliance with existing state or federal law.
7. Member interest groups approved by the board, limited to information concerning the member's death.
8. A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.
9. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 15-39.1-12.2. The information disclosed under this subsection must be limited to information necessary for drafting the order.
10. Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death. Information relating to beneficiaries may be disclosed to other beneficiaries of the same member.
11. The general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member.
12. Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.
13. A person if the information relates to an employer service purchase, but the information must be limited to the member's name and employer, the retirement program in which the member participates, the amount of service credit purchased by the employer, and the total amount expended by the employer for that service credit purchase. Information identified under this subsection may only be obtained from the member's employer.

**15-39.1-31. Correction of errors - Adjustment to actuarial equivalent.**

If any change or error in the records of the fund or any participating employer or error in any calculation results in any person receiving from the fund more than that person would have been entitled to receive had the records been correct, the board shall correct the error and, as far as practicable, adjust the payment in such a manner that the actuarial equivalent of the benefit to which the person was entitled is paid or the board may offset the amount of the overpayment from the amount of future retirement benefit payments. However, if the person agrees to repay the fund for the cost of the error upon terms acceptable to the board, no actuarial adjustment to the person's retirement benefit need be made.

**15-39.1-32. Correction of errors - Lump sum payment.**

If any change or error in the records of the fund or any participating employer or any error in calculation results in any person receiving less from the fund than that person would have been entitled to receive had the records been correct, the board shall correct the error and adjust the payment in such a manner that the benefit to which the person was correctly entitled is paid. In addition, the board shall remit payment to the person in a lump sum to compensate that person for the difference between what was paid and what should have been paid. No interest may be assessed against the fund for providing payment for the correction of any loss of benefits.

**15-39.1-33. 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 tier one member's age plus service credit must be equal to or greater than seventy-seven;
  - b. The tier one member's age must be at least fifty-five and the member must have at least three years of service credit;
  - c. The tier two member's age plus service credit must be equal to or greater than eighty-two; or
  - d. The tier two member's age must be at least fifty-five and the member must have at least five 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.

**15-39.1-34. Internal Revenue Code compliance.**

1. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code, as amended, and regulations adopted pursuant to those provisions as they apply to governmental plans.
2. Pursuant to the rollover rules under section 401(a)(31) of the Internal Revenue Code, a distributee may elect to have an eligible rollover distribution, as defined in section 402(f)(2)(A) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee.
  - a. The definition of eligible retirement plan also applies in the case of a distribution to an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code.

- b. Any portion of a distribution that consists of after-tax employee contributions not included in gross income may not be transferred except to an individual retirement account or individual retirement annuity described in section 408 or 408A of the Internal Revenue Code or to a qualified plan or an annuity contract described in sections 401(a) and 403(b) of the Internal Revenue Code, respectively, which agrees to separately account for such amounts, including separately accounting for the portion of the distribution which is included in gross income and the portion of the distribution which is not so included.
- c. For purposes of this section, "distributee" includes a nonspouse beneficiary of a deceased member; except in the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or individual retirement annuity described in section 408 or 408A of the Internal Revenue Code which is established on behalf of the nonspouse beneficiary and will be treated as an inherited individual retirement account or inherited individual retirement annuity pursuant to section 402(c)(11) of the Internal Revenue Code.

**15-39.1-35. Savings clause - Plan modifications.**

If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.