

Introduced by

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

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

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

- 11 2. "Beneficiary" means the person designated in writing by the member or, in the
12 absence of such designation, the member's surviving spouse, if any. The
13 member's surviving spouse must be the member's primary beneficiary unless the
14 surviving spouse has consented in writing to an alternate beneficiary.
- 15 9. "Salary" means a member's earnings in eligible employment under this chapter for
16 teaching, supervisory, administrative, and extracurricular services during a school
17 year reported as salary on the member's federal income tax withholding
18 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.
19 125, 401(k), 403(b), 414(h), or 457. "Salary" with respect to a member who begins
20 participation in the plan under former chapter 15-39, or chapter 15-39.1 or 15-39.2
21 after June 30, 1996, may not exceed the annual compensation limits established
22 under 26 U.S.C. 401(a)(17)(B), as amended by the Omnibus Budget Reconciliation
23 Act of 1993 [Pub. L. 103-66; 107 Stat. 312]. The annual compensation limit is one
24 hundred fifty thousand dollars, as adjusted by the commissioner of the internal

1 revenue service for increases in the cost of living in accordance with 26 U.S.C.
2 401(a)(17)(B). "Salary" does not include fringe benefits such as payments for
3 unused sick leave, personal leave, vacation leave, housing allowances,
4 transportation expenses, early retirement incentive pay, severance pay, medical
5 insurance, workers' compensation benefits, disability insurance premiums or
6 benefits, referee pay, busdriver pay, janitorial pay, or salary received by a member
7 in lieu of previously employer-provided fringe benefits ~~under an agreement~~
8 ~~between the member and participating employer entered into within sixty months~~
9 ~~before retirement.~~

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

- 12 1. The following members are eligible to receive monthly lifetime retirement benefits
13 under this section:
 - 14 a. All members who have ~~completed five~~ earned three years of teaching credit
15 and who have attained the age of sixty-five years.
 - 16 b. All members who have ~~completed five~~ earned three years of teaching credit
17 and who have a combined total of years of service credit and years of age
18 which equals eighty-five.
- 19 4. Retirement benefits must begin no later than April first of the calendar year
20 following the year the member attains age seventy and one-half or April first of the
21 calendar year following the year the member terminates covered employment,
22 whichever is later. Payments must be made over a period of time which does not
23 exceed the life expectancy of the member or the joint life expectancy of the
24 member and the beneficiary. Payment of minimum distributions must be made in
25 accordance with section 401(a)(9) of the Internal Revenue Code, and the
26 regulations issued under that section, as applicable to governmental plans.

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

29 **15-39.1-11. Vesting of rights.** When any member has paid assessments ~~for a period~~
30 ~~of five~~ and earned three years ~~for~~ of service in this state, that member has a vested right to a

1 retirement annuity but is not entitled to payments under this chapter until the member meets the
2 requirements set forth in section 15-39.1-10 or 15-39.1-12.

3 **SECTION 4. AMENDMENT.** Section 15-39.1-12 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **15-39.1-12. Early retirement.** Any teacher who has acquired a vested right to a
6 retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may
7 retire prior to the normal retirement age as set forth herein but the benefits to which ~~he~~ the
8 member is then entitled must be reduced to the actuarial equivalent of the benefit credits
9 earned to the date of early retirement from the earlier of age sixty-five or the age at which
10 current service plus age equals eighty-five.

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

13 **15-39.1-16. Option of teachers eligible to receive annuities.** The board shall adopt
14 rules providing for the receipt of retirement benefits in the following optional forms:

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

23 Option two. Upon the death of the teacher, one-half of the reduced retirement
24 allowance must be continued throughout the life of, and paid to, the person as the teacher has
25 nominated by written designation filed with the board at the time of retirement. If the person
26 designated to receive the teacher's reduced retirement allowance predeceases the teacher, the
27 reduced retirement allowance must be converted to a single life retirement annuity under which
28 benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1,
29 1989, or, if the designated beneficiary dies on or after July 1, 1989, must begin on the first day
30 of the month following the death of the person designated.

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

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

9 Option five. Level retirement income with social security option, which is available to
10 teachers retiring before social security is payable.
11 The amount of the reduced retirement allowance payable upon the exercise of any of these
12 options must be computed upon an actuarial basis through the use of standard actuarial tables
13 and based upon the ages of the teacher and the teacher's designated beneficiary. Prior to
14 payment of a benefit claim, the surviving spouse, if any, must have consented in writing to the
15 member's choice of benefit option.

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

18 2. If the death of a member who has acquired a vested interest should occur prior to
19 retirement, then the member's beneficiary may apply for a refund of the member's
20 assessments accumulated with interest. If there is no beneficiary, then the same
21 must be paid to the surviving children, or if none, to the member's estate; provided,
22 however, that if no probate proceedings have been instituted within thirty days of
23 the death of the member, then to the heirs at law who file claim with the fund within
24 one hundred fifty days of the death of the member. In lieu of a refund, the
25 beneficiary may elect either to receive a monthly annuity in accordance with option
26 one under section 15-39.1-16, with the amount of the annuity being determined as
27 though the deceased member had retired under the option on the day benefits
28 commence to the beneficiary; or the beneficiary may elect to receive for sixty
29 months an amount equal to the monthly annuity the member would have received
30 if the member had attained age sixty-five and retired, based on the member's
31 credited service to date of death. If any ~~applicant for an annuity~~ member under

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

4 **SECTION 7. AMENDMENT.** Section 15-39.1-20 of the 1997 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible
7 under the terms of this chapter to participate in the fund, the member may, after a period of one
8 hundred twenty days, withdraw from the fund and is then entitled to receive a refund of
9 assessments accumulated with interest. The one-hundred-twenty-day requirement may be
10 waived by the board when it has evidence the teacher will not be returning to teach in North
11 Dakota. The refund is in lieu of any other benefits to which the member may be entitled under
12 the terms of this chapter. The accumulated assessments of a member who ceases to be
13 eligible to participate in the fund before ~~accumulating five years of service credit~~ becoming
14 vested must be automatically refunded. The assessments plus interest earned, if not claimed
15 by the member, must be returned in the fiscal year following the date of termination. The
16 automatic refund must be waived provided the member presents the board with a statement of
17 intent to return to teach in North Dakota within thirty-six months after eligibility to participate in
18 the fund ceases. The board may waive the automatic refund for members who present to the
19 board a statement of intent to return to teach in North Dakota within a period exceeding
20 thirty-six months after eligibility to participate in the fund ceases. ~~For distributions made after~~
21 ~~January 1, 1993, notwithstanding any provision of the plan to the contrary that would otherwise~~
22 ~~limit a member's refund election under this chapter, a~~ A member may elect, at the time and
23 under rules ~~established~~ adopted by the board, to have any portion of an eligible rollover
24 distribution paid directly in a direct rollover to an eligible retirement plan specified by the
25 member as allowed under section 401(a)(31) of the Internal Revenue Code.

26 **SECTION 8. AMENDMENT.** Section 15-39.1-24 of the 1997 Supplement to the North
27 Dakota Century Code is amended and reenacted as follows:

28 **15-39.1-24. Purchase of additional credit.** Prior to retirement a teacher who provides
29 proof of eligibility under rules adopted by the board may purchase additional credit for use
30 toward retirement in the following instances and manner:

- 1 1. ~~Any A~~ teacher may purchase service credit for years of elementary or secondary
2 teaching service at an accredited out-of-state public, private, or parochial school or
3 educational institution supported by public taxation out of North Dakota. However,
4 a teacher must complete five years of creditable service in this state before the
5 teacher is eligible to purchase the first five years of service credit for out-of-state
6 teaching under this subsection. The teacher may purchase any part of the
7 remaining years of service credit for out-of-state teaching with each year of service
8 credit conditional upon the teacher completing one additional year of creditable
9 service in this state following the out-of-state teaching. The years of out-of-state
10 teaching service do not qualify for credit in this state if the years claimed also
11 qualify for retirement benefits from an out-of-state retirement system.
- 12 2. ~~Any A~~ teacher not qualified to receive military credit under the Uniformed Services
13 Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat.
14 3150; 38 U.S.C. 4301-4307] or Veterans' Reemployment Rights Act of 1991
15 [Pub. L. 93-508; 88 Stat. 3150] who has received an honorable discharge from
16 military service of the United States of America may receive purchase military
17 credit for no more than four years of active service, upon filing application and
18 proof with the board ~~and subject to the terms of this chapter upon teaching one~~
19 ~~year in North Dakota subsequent to military service.~~ ~~Members qualified to receive~~
20 ~~military credit under the Uniformed Services Employment and Reemployment~~
21 ~~Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] shall~~
22 ~~only pay member assessments plus interest pursuant to rules adopted by the~~
23 ~~board. For those individuals becoming eligible to receive military credit under the~~
24 ~~Uniformed Services Employment and Reemployment Rights Act after June 30,~~
25 ~~1991, the employer shall pay the required employer contribution for military~~
26 ~~service.~~
- 27 3. ~~A teacher who attends a college, university, or other recognized school for two~~
28 ~~consecutive semesters or three consecutive quarters, other than summer sessions,~~
29 ~~for the purpose of improving the teacher's qualifications in the teaching profession~~
30 ~~is entitled to have credited such periods while in attendance at that college,~~
31 ~~university, or school, not to exceed three years of teaching service, under this~~

- 1 ~~chapter. To be eligible for purchasing credit under this subsection, the teacher~~
2 ~~must have taught at least one full school year in North Dakota immediately~~
3 ~~preceding entrance into the college, university, or school, or, immediately following~~
4 ~~such training, the teacher must have taught not less than one full school year in a~~
5 ~~public school or state institution of this state. A teacher may purchase service~~
6 ~~credit for credit lost while on an approved leave of absence from teaching duties.~~
- 7 4. A teacher may purchase service credit for the time during each legislative session
8 spent serving as a member of the legislative assembly while holding eligible
9 employment under this chapter. ~~Service credit for a legislative session must be~~
10 ~~purchased within one year after the adjournment of that legislative session.~~ As an
11 alternative to a teacher purchasing service credit under this subsection, a teacher
12 and the governmental body employing the teacher may enter into an agreement by
13 which payment for service credit for time spent during each legislative session by
14 the teacher serving as a member of the legislative assembly is made pursuant to
15 section 15-39.1-09. The agreement must provide that contributions made pursuant
16 to section 15-39.1-09 are calculated based on the teacher's annual salary without
17 reduction for a leave of absence taken by the teacher during the legislative
18 session.
- 19 5. A teacher may purchase credit for years of elementary or secondary teaching
20 ~~service as an administrator or teacher in the field of education~~ if employed by an
21 agency of the United States government ~~teaching school age children.~~ The
22 ~~maximum service that may be purchased under this subsection is ten years.~~
- 23 6. ~~An active~~ A teacher who is elected president of a professional educational
24 organization recognized by the board and who serves in a full-time capacity in lieu
25 of teaching may purchase service credit for the time spent serving as president.
26 ~~The service credit must be purchased within one year after the teacher leaves the~~
27 ~~position.~~ As an alternative to purchasing service credit under this subsection, a
28 teacher and the governmental body employing the teacher may enter into an
29 agreement under which payment for service credit for the time spent as president
30 of the professional educational organization is made pursuant to section
31 15-39.1-09. The agreement must provide that contributions made pursuant to

1 section 15-39.1-09 are calculated based on the teacher's annual salary as
2 president.

3 7. A teacher may purchase service credit for years of elementary or secondary
4 teaching service in a North Dakota private or parochial school.

5 8. A teacher who has at least five years of teaching service credit in the fund may
6 purchase credit not based on service for use toward retirement eligibility and
7 benefits. The purchase of service credit for such nonqualified service as defined
8 under section 415(n) of the Internal Revenue Code is limited to an aggregate of
9 five years.

10 9. A teacher who had that person's North Dakota teaching service interrupted by
11 military service in any branch of the United States armed forces and received an
12 honorable discharge may receive credit for military service pursuant to applicable
13 federal veterans' rights acts including the Uniformed Services Employment and
14 Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C.
15 4301-4307] or the Veterans' Reemployment Rights Act of 1991 [Pub. L. 93-508; 88
16 Stat. 3150].

17 10. With the exception of military service, purchased service credit is not eligible for
18 credit if the years claimed also qualify for retirement benefits from another
19 retirement system.

20 11. The fund may accept rollovers from other qualified plans under rules adopted by
21 the board for the purchase of additional service credit, but only to the extent the
22 transfer is a rollover contribution that meets the requirements of section 408 of the
23 Internal Revenue Code.

24 8. 12. ~~Except as provided in subsections 2, 4, and 6, the~~ The amount of additional
25 service eligible to be purchased under this section must be credited to the teacher
26 when the teacher has made the required payment. ~~In all cases~~ Except as provided
27 in subsections 4, 6, and 9, the purchase cost must be on an actuarial equivalent
28 basis.

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