

**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2046  
(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

AN ACT to create and enact two new subsections to section 15-39.1-04 of the North Dakota Century Code, relating to definitions under the teachers' fund for retirement; to amend and reenact subsection 9 of section 15-39.1-04, subsection 1 of section 15-39.1-09, section 15-39.1-10, subdivision c of subsection 1 of section 15-39.1-10.3, sections 15-39.1-10.6, 15-39.1-11, 15-39.1-12, and 15-39.1-15, subsection 1 of section 15-39.1-19.1, sections 15-39.1-19.2 and 15-39.1-20, and subsection 2 of section 15-39.1-33 of the North Dakota Century Code, relating to the incorporation of federal law changes, employer contributions and service credit purchases, eligibility for and determination of benefits, vesting, early retirement, returning to teaching, and accepting a refund from the fund under the teachers' fund for retirement; to provide for application; to provide an appropriation; to provide an effective date; and to provide an expiration date.

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

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

9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on ~~August July 1, 2005~~ July 1, 2007. "Salary" includes bonus amounts paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on ~~August July 1, 2005~~ July 1, 2007, as adjusted for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on ~~August July 1, 2005~~ July 1, 2007. 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, busdriver pay, or janitorial pay.
  - f. Amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis.

- g. Recruitment bonuses.
- h. Other benefits or payments not defined in subdivisions a through g which the board determines to be ineligible teachers' fund for retirement salary.

**SECTION 2.** Two new subsections to section 15-39.1-04 of the North Dakota Century Code are created and enacted as follows:

"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.

"Tier two member" means a teacher who is not a tier one member.

**SECTION 3. AMENDMENT.** Subsection 1 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2 of section 15-39.1-10.3 and subsection 3 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. Every Except as otherwise provided by law, every governmental body employing a teacher shall pay to the fund seven eight and seventy-five twenty-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

**SECTION 4. AMENDMENT.** Section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The following members are eligible to receive monthly lifetime normal retirement benefits under this section:
  - a. All tier one members who have earned three years of teaching service credit and who have attained the age of sixty-five years.
  - b. All tier one members who have earned three years of teaching service credit and who have a combined total of years of service credit and years of age which equals or exceeds eighty-five.
  - c. All tier two members who have earned five years of teaching service credit and who have attained the age of sixty-five years.
  - d. All tier two members who have earned five years of teaching service credit 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. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. 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 in effect on ~~August July 1, 2005~~ 2007, and the regulations issued under that section, as applicable to governmental plans.

**SECTION 5. AMENDMENT.** Subdivision c of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

- 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 teacher 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.

**SECTION 6. AMENDMENT.** Section 15-39.1-10.6 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on ~~August July 1, 2005~~ 2007, for governmental plans. ~~This section does not constitute an election under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] in effect on August 1, 2005.~~

**SECTION 7. AMENDMENT.** Section 15-39.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-11. Vesting of rights.** When ~~any~~ a tier one member has paid assessments and 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 paid assessments and 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.

**SECTION 8. AMENDMENT.** Section 15-39.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-12. Early retirement.** ~~Any teacher~~ A tier one 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 ~~herein~~ in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty-five or the age at which current service plus age equals eighty-five. A tier two 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 to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty-five or the age at which current service plus age equals ninety.

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

**15-39.1-15. Withdrawal from fund - Return to teaching.** ~~Any~~ A teacher who has withdrawn from the fund as set forth in this chapter may, by returning to teach in a public school or state institution of this state, regain service credit for prior teaching by making the required payment. The required payment, if made within five years of returning to teach in covered employment, is the amount that was withdrawn with interest. In all other cases, the purchase cost must be 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.

**SECTION 10. AMENDMENT.** Subsection 1 of section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in section 15-39.1-19.2, a retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may not return to covered employment until thirty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the reemployed retiree's contract as follows:
  - a. Retiree reemployment of nine months or less, annual limit is seven hundred hours;
  - b. Retiree reemployment of ten months, annual limit is eight hundred hours;
  - c. Retiree reemployment of eleven months, annual limit is nine hundred hours; or
  - d. Retiree reemployment of twelve months, annual limit is one thousand hours.

Employment as a substitute teacher does not apply to the annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit.

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. Should the retired member's employment exceed the annual hour limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.

A retired member who returns to teaching shall pay the ~~required member contributions required by section 15-39.1-09~~ on those earnings received by the retired member after reaching the annual hour limit. ~~The employer shall pay the required contributions in a like manner.~~

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 both before and after the retired member reaches the annual hour limit.

**SECTION 11. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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 must:
  - a. Return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule; and
  - b. If retired after January 1, 2001, 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.
  - c. Notify the fund office in writing within thirty days of the retired member's return to covered employment. The retired member's employer must also 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 is not required to pay the employee assessment required by section 15-39.1-09. 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 reemployment. 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 reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.
3. 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.

**SECTION 12. AMENDMENT.** Section 15-39.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter, 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. ~~The accumulated assessments of a member who ceases to be eligible to participate in the fund before becoming vested must be automatically refunded. The assessments plus interest earned, if not claimed by the member, must be returned in the fiscal year following the date of termination. The automatic refund must be waived provided the member presents the board with a statement of intent to return to teach in North Dakota within thirty-six months after eligibility to participate in the fund ceases. The board may waive the automatic refund for members who present to the board a statement of intent to return to teach in North Dakota within a period exceeding thirty-six months after eligibility to participate in the fund ceases.~~ A member may elect, at the time and under rules adopted by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member as allowed under section 401(a)(31) of the Internal Revenue Code in effect on ~~August~~ July 1, 2005 2007.

**SECTION 13. AMENDMENT.** Subsection 2 of section 15-39.1-33 of the North Dakota Century Code is amended and reenacted as follows:

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; ~~or~~
  - 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; or
  - 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.

**SECTION 14. APPLICATION.** Sections 1, 6, 10, 11, 12, and 15 of this Act apply to salaries earned on and after July 1, 2007, and sections 2, 3, 4, 5, 7, 8, 9, and 13 apply to salaries earned on and after July 1, 2008.

**SECTION 15. APPROPRIATION.** There is appropriated out of any moneys in the teachers' fund for retirement, not otherwise appropriated, the sum of \$5,000, or so much of the sum as may be necessary, to the teachers' fund for retirement for the purpose of implementing this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 16. EFFECTIVE DATE.** Sections 1, 6, 10, 11, 12, 14, and 15 of this Act become effective on July 1, 2007, and sections 2, 3, 4, 5, 7, 8, 9, and 13 of this Act become effective on July 1, 2008.

**SECTION 17. EXPIRATION DATE.** Section 3 of this Act is effective until the ratio of the actuarial value of assets to the actuarial accrued liability of the teachers' fund for retirement increases to ninety percent based upon the actuarial value of assets and expires on the July first that follows the first valuation that shows a ninety percent funded ratio. The board of trustees of the teachers' fund for retirement shall notify the legislative council of the expiration date of section 3 of this Act.

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President of the Senate

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

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

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

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2046.

Senate Vote:    Yeas    45        Nays    0        Absent    2

House Vote:    Yeas    57        Nays    27       Absent    10

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

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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