

HOUSE BILL NO.

Introduced by

Representative Wald

1 A BILL for an Act to create and enact a new section to chapter 15-39.1 and chapter 15-39.3 of
2 the North Dakota Century Code, relating to a defined contribution retirement plan for teachers;
3 to amend and reenact sections 15-39.1-09 and 15-39.1-30 of the North Dakota Century Code,
4 relating to a defined contribution retirement plan for teachers; to provide a penalty; and to
5 provide a continuing appropriation.

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

7 **SECTION 1.** A new section to chapter 15-39.1 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Teachers' fund for retirement closed to new members.** Notwithstanding any other
10 provision of law, after July 31, 2011, the teachers' fund for retirement plan established under
11 this chapter is closed to new members.

12 **SECTION 2. AMENDMENT.** Section 15-39.1-09 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **15-39.1-09. Membership in fund and assessments - Employer payment of**
15 **employee contribution.**

16 1. Except as otherwise provided by law, every teacher first employed before
17 August 1, 2011, is a member of the fund and must be assessed upon the teacher's
18 salary seven and seventy-five hundredths percent per annum, which must be
19 deducted, certified, and paid monthly to the fund by the disbursing official of the
20 governmental body by which the teacher is employed. Except as otherwise
21 provided by law, every governmental body employing a teacher shall pay to the
22 fund eight and seventy-five hundredths percent per annum of the salary of each
23 teacher employed by it. The disbursing official of the governmental body shall

- 1 certify the governmental body payments and remit the payments monthly to the
2 fund.
- 3 2. Each employer, at its option, may pay the teacher contributions required by
4 subsection 1 for all compensation earned after June 30, 1983. The amount paid
5 must be paid by the employer in lieu of contributions by the employee. If an
6 employer decides not to pay the contributions, the amount that would have been
7 paid will continue to be deducted from compensation. If contributions are paid by
8 the employer, they must be treated as employer contributions in determining
9 income tax treatment under this code and the federal Internal Revenue Code. If
10 contributions are paid by the employer, they may not be included as gross income
11 of the teacher in determining tax treatment under this code and the Internal
12 Revenue Code until they are distributed or made available. The employer shall
13 pay these teacher contributions from the same source of funds used in paying
14 compensation to the teachers. The employer shall pay these contributions by
15 effecting an equal cash reduction in the gross salary of the employee or by an
16 offset against future salary increases. If teacher contributions are paid by the
17 employer, they must be treated for the purposes of this chapter in the same
18 manner and to the same extent as teacher contributions made prior to the date the
19 contributions were assumed by the employer. The option given employers by this
20 subsection must be exercised in accordance with rules adopted by the board.
- 21 3. A person, except the superintendent of public instruction, who is certified to teach
22 in this state by the education standards and practices board and who is first
23 employed and entered upon the payroll of the superintendent of public instruction
24 after January 6, 2001, and before August 1, 2011, may elect to become a
25 participating member of the public employees retirement system. An election
26 made by a person to participate in the public employees retirement system under
27 this subsection is irrevocable. Nonteaching employees of the superintendent of
28 public instruction, including the superintendent of public instruction, may elect to
29 transfer to the public employees retirement system before August 1, 2011,
30 pursuant to section 54-52-02.13. Employees of the state board for career and

1 technical education may elect to transfer to the public employees retirement
2 system before August 1, 2011, pursuant to section 54-52-02.14.

3 4. An individual who is first employed and entered upon the payroll of the state board
4 for career and technical education after July 1, 2007, may elect to become a
5 participating member of the public employees retirement system. An election
6 made by an individual to participate in the public employees retirement system
7 under this subsection is irrevocable.

8 **SECTION 3. AMENDMENT.** Section 15-39.1-30 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **15-39.1-30. Confidentiality of records.** All records relating to the retirement benefits
11 of a member or a beneficiary under this chapter and chapter 15-39.3 are confidential and are
12 not public records. The information and records may be disclosed, under rules adopted by the
13 board, only to:

- 14 1. A person to whom the teacher has given written consent to have the information
15 disclosed.
- 16 2. A person legally representing the teacher, upon proper proof of representation, and
17 unless the teacher specifically withholds consent.
- 18 3. A person authorized by a court order.
- 19 4. A member's participating employer, limited to information concerning the member's
20 years of service credit, years of age, employer and employee contribution
21 amounts, and salary. The board may share other types of information as needed
22 by the employer to validate the employer's compliance with existing state or federal
23 law. Any information provided to the member's participating employer under this
24 subsection must remain confidential except as provided in subsection 6.
- 25 5. The administrative staff of the public employees retirement system for purposes
26 relating to membership and benefits determination.
- 27 6. State or federal agencies for the purpose of validating member eligibility or
28 employer compliance with existing state or federal law.
- 29 7. Member interest groups approved by the board, limited to information concerning
30 the member's death.

- 1 8. A government child support enforcement agency for purposes of establishing
2 paternity or establishing, modifying, or enforcing a child support obligation of the
3 member.
- 4 9. The member's spouse or former spouse, that individual's legal representative, and
5 the judge presiding over the member's dissolution proceeding for purposes of
6 aiding the parties in drafting a qualified domestic relations order under section
7 15-39.1-12.2. The information disclosed under this subsection must be limited to
8 information necessary for drafting the order.
- 9 10. Beneficiaries designated by a participating member or a former participating
10 member to receive benefits after the member's death, but only after the member's
11 death. Information relating to beneficiaries may be disclosed to other beneficiaries
12 of the same member.
- 13 11. The general public, but only after the board has been unable to locate the member
14 for a period in excess of two years, and limited to the member's name and the fact
15 that the board has been unable to locate the member.
- 16 12. Any person if the board determines disclosure is necessary for treatment,
17 operational, or payment purposes, including the completion of necessary
18 documents.
- 19 13. A person if the information relates to an employer service purchase, but the
20 information must be limited to the member's name and employer, the retirement
21 program in which the member participates, the amount of service credit purchased
22 by the employer, and the total amount expended by the employer for that service
23 credit purchase. Information identified under this subsection may only be obtained
24 from the member's employer.

25 **SECTION 4.** Chapter 15-39.3 of the North Dakota Century Code is created and
26 enacted as follows:

27 **15-39.3-01. Definition of terms.** As used in this chapter, unless the context otherwise
28 requires:

- 29 1. "Board" means the board of trustees of the teachers' fund for retirement.
- 30 2. "Eligible employee" means a teacher.
- 31 3. "Employer" means a governmental body employing a teacher.

- 1 4. "Participating member" means an eligible employee participating in the defined
2 contribution retirement plan established under this chapter.
- 3 5. "Salary" means a member's earnings in eligible employment under this chapter for
4 teaching, supervisory, administrative, and extracurricular services during a school
5 year reported as salary on the member's federal income tax withholding
6 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.
7 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, 2011. "Salary"
8 includes bonus amounts paid to members for performance, retention, experience,
9 and other service-related bonuses, unless amounts are conditioned on or made in
10 anticipation of an individual member's retirement or termination. The annual salary
11 of each member taken into account in determining benefit accruals and
12 contributions may not exceed the annual compensation limits established under
13 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2011, as adjusted for increases in
14 the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1,
15 2011. "Salary" does not include:
- 16 a. Fringe benefits or side, nonwage, benefits that accompany or are in addition
17 to a member's employment, including insurance programs, annuities,
18 transportation allowances, housing allowances, meals, lodging, or expense
19 allowances, or other benefits provided by a member's employer.
- 20 b. Insurance programs, including medical, dental, vision, disability, life, long-term
21 care, workforce safety and insurance, or other insurance premiums or
22 benefits.
- 23 c. Payments for unused sick leave, personal leave, vacation leave, or other
24 unused leave.
- 25 d. Early retirement incentive pay, severance pay, or other payments conditioned
26 on or made in anticipation of retirement or termination.
- 27 e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- 28 f. Amounts received by a member in lieu of previously employer-provided
29 benefits or payments that are made on an individual selection basis.
- 30 g. Recruitment bonuses.

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

3 6. "Teacher" means:

4 a. Every person licensed by the education standards and practices board who is
5 contractually employed in teaching, supervisory, administrative, or
6 extracurricular services by a state institution, multidistrict special education
7 unit, area career and technology center, regional education association,
8 school board, or other governing body of a school district of this state,
9 including superintendent, assistant superintendent, business manager,
10 principal, assistant principal, and special teacher. For purposes of this
11 subdivision, "teacher" includes a person contractually employed by one of the
12 above employers to provide teaching, supervisory, administrative, or
13 extracurricular services to a separate state institution, state agency,
14 multidistrict special education unit, area career and technology center,
15 regional education association, school board, or other governing body of a
16 school district of this state under a third-party contract.

17 b. The superintendent of public instruction, every assistant superintendent of
18 public instruction, every county superintendent, every assistant
19 superintendent, every supervisor of instruction, the professional staff of the
20 department of career and technical education, the professional staff of the
21 center for distance education, and the professional staff of an interim school
22 district.

23 **15-39.3-02. Members.** An eligible employee who is first employed and entered upon
24 the payroll of that individual's employer after July 31, 2011, is a member of the defined
25 contribution retirement plan established under this chapter.

26 **15-39.3-03. Administration.** The board shall administer the defined contribution
27 retirement plan established under this chapter and the board or vendors contracted for by the
28 board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan.
29 The board has the exclusive authority and responsibility to employ or contract with personnel
30 and for services that the board determines necessary for the proper administration of and

1 investment of assets of the plan, including managerial, professional, legal, clerical, technical,
2 and administrative personnel or services.

3 **15-39.3-04. Direction of investments.** Each participating member shall direct the
4 investment of the individual's accumulated employer and employee contributions and earnings
5 to one or more investment choices within available categories of investment provided by the
6 board.

7 **15-39.3-05. Administrative expenses - Continuing appropriation.** The
8 administrative expenses of the plan must be paid by the participating members in a manner
9 determined by the board. The board or vendors contracted for by the board may charge
10 reasonable administrative expenses and deduct those expenses from a participating member's
11 account in the defined contribution retirement plan established under this chapter. The board
12 shall place any money deducted in an administrative expenses account with the state treasurer.
13 All moneys in the administrative expenses account, not otherwise appropriated, or so much of
14 the moneys as may be necessary, are appropriated to the board on a continuing basis for the
15 purpose of retaining a consultant as required for the administration of this chapter.

16 **15-39.3-06. Participation in other plans.** A participating member may not participate
17 in any other public sector retirement benefits plan for simultaneous service rendered to the
18 same public sector employer. However, this section does not prohibit a participating member
19 from participating in a retirement plan established by this state or other public sector employer
20 under the federal Internal Revenue Code.

21 **15-39.3-07. Contributions - Penalty.**

22 1. Each participating member must be assessed upon the teacher's salary seven and
23 seventy-five hundredths percent per annum, which must be deducted, certified,
24 and paid monthly to the participating member's account by the disbursing official of
25 the governmental body by which the teacher is employed.

26 2. Every governmental body employing a teacher shall pay to the participating
27 member's account eight and seventy-five hundredths percent per annum of the
28 salary of each teacher employed by it. The disbursing official of the governmental
29 body shall certify the governmental body payments and remit the payments
30 monthly to the participating member's account.

1 3. Each employer, at its option, may pay the teacher contributions required by
2 subsection 1 for all compensation earned after July 31, 2011. The amount paid
3 must be paid by the employer in lieu of contributions by the employee. If an
4 employer decides not to pay the contributions, the amount that would have been
5 paid will continue to be deducted from compensation. If contributions are paid by
6 the employer, they must be treated as employer contributions in determining
7 income tax treatment under this code and the federal Internal Revenue Code. If
8 contributions are paid by the employer, they may not be included as gross income
9 of the teacher in determining tax treatment under this code and the Internal
10 Revenue Code until they are distributed or made available. The employer shall
11 pay these contributions from the same source of funds used in paying
12 compensation to the teachers. The employer shall pay these contributions by
13 effecting an equal cash reduction in the gross salary of the employee or by an
14 offset against future salary increases. If teacher contributions are paid by the
15 employer, they must be treated for the purposes of this chapter in the same
16 manner and to the same extent as teacher contributions made prior to the date the
17 contributions were assumed by the employer. The option given employers by this
18 subsection must be exercised in accordance with rules adopted by the board.

19 **15-39.3-08. Acceptance of rollovers.** The plan may allow a participating member to
20 transfer or roll over funds from other qualified plans into the member's account under rules
21 adopted by the board.

22 **15-39.3-09. Military service under the Uniformed Services Employment and**
23 **Reemployment Rights Act - Member retirement credit.** A member reemployed under the
24 Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L.
25 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the
26 period of qualified military service. The required contribution for the credit must be made in the
27 same manner and by the same party as would have been made had the employee been
28 continuously employed. If the salary the member would have received during the period of
29 service is not reasonably certain, the member's average rate of compensation during the
30 twelve-month period immediately preceding the member's period of service or, if shorter, the
31 period of employment immediately preceding that period, times the number of months of credit

1 being purchased must be used. A member must be allowed up to three times the period of
2 military service or five years, whichever is less, to make any required payments. This provision
3 applies to all qualifying periods of military service since October 1, 1994. Any payments made
4 by the member to receive qualifying credit inconsistent with this provision must be refunded. An
5 employee shall make application to the employer for credit and provide a DD Form 214 to verify
6 service.

7 **15-39.3-10. Vesting.** A participating member is immediately one hundred percent
8 vested in that member's contributions made to that member's account under this chapter. A
9 participating member vests in the employer contributions made on that member's behalf to an
10 account under this chapter according to the following schedule:

- 11 1. Upon completion of two years of service, fifty percent.
- 12 2. Upon completion of three years of service, seventy-five percent.
- 13 3. Upon completion of four years of service, one hundred percent.

14 A participating member also becomes one hundred percent vested in the employer
15 contributions upon reaching age sixty-five. Any forfeiture as a result of the failure of a
16 participating member to vest in the employer contribution must be deposited in the
17 administrative expenses account.

18 **15-39.3-11. Refund beneficiaries.** A participating or former participating member may
19 nominate one or more individuals as a refund beneficiary by filing written notice of nomination
20 with the board. If the participating member or former participating member is married at the
21 time of the nomination and the participant's spouse is not the refund beneficiary for one
22 hundred percent of the account, the nomination is not effective unless the nomination is signed
23 by the participant's spouse. However, the board may waive this requirement if the spouse's
24 signature cannot be obtained because of extenuating circumstances.

25 **15-39.3-12. Qualified domestic relations orders.**

- 26 1. The board or a vendor contracted for by the board shall apportion a participating
27 member's account in the defined contribution retirement plan under this chapter in
28 accordance with the applicable requirements of any qualified domestic relations
29 order. The board shall review a domestic relations order submitted to it to
30 determine if the domestic relations order is qualified under this section and under
31 rules adopted by the board for determining the qualified status of domestic

- 1 relations orders, administering distributions, and apportioning accounts under the
2 qualified orders. Upon determination of the domestic relations order as qualified,
3 the board shall notify the participating member, the named alternate payee, and
4 the vendor, if applicable, of its receipt of the qualified domestic relations order.
- 5 2. A "qualified domestic relations order" for purposes of this section means any
6 judgment, decree, or order, including approval of a property settlement agreement,
7 which relates to the provision of child support, spousal support, or marital property
8 rights to a spouse, former spouse, child, or other dependent of a participating
9 member, is made pursuant to a North Dakota domestic relations law, which creates
10 or recognizes the existence of an alternate payee's right to, or assigns to an
11 alternate payee the right to, receive all or a part of a participating member's
12 account in the defined contribution retirement plan under this chapter. A qualified
13 domestic relations order may not require the board to provide any type or form of
14 benefit, or any option, not otherwise allowed under this chapter. However, a
15 qualified domestic relations order may require distribution from an account in the
16 defined contribution retirement plan under this chapter notwithstanding that the
17 participating member has not terminated eligible employment. A qualified domestic
18 relations order must specify:
- 19 a. The name and last-known mailing address of the participating member and
20 the name and the mailing address of each alternate payee covered by the
21 order;
- 22 b. The amount or percentage of the participating member's account to be paid to
23 each alternate payee;
- 24 c. The number of payments or period to which the order applies; and
25 d. Each retirement plan to which the order applies.

26 **15-39.3-13. Distributions.**

- 27 1. A participating member is eligible to receive distribution of that member's
28 accumulated balance in the plan upon becoming a former participating member.
- 29 2. Upon the death of a participating member or former participating member, the
30 accumulated balance of that deceased participant is considered to belong to the
31 refund beneficiary, if any, of that deceased participant. If a valid nomination of

- 1 refund beneficiary is not on file with the board, the board, in a lump sum
2 distribution, shall distribute the accumulated balance to a legal representative, if
3 any, of the deceased participant or, if there is no legal representative, to the
4 deceased participant's estate.
- 5 3. A former participating member may elect one or a combination of several of the
6 following methods of distribution of the accumulated balance:
- 7 a. A lump sum distribution to the recipient.
8 b. A lump sum direct rollover to another qualified plan, to the extent allowed by
9 federal law.
- 10 c. Periodic distributions, as authorized by the board.
11 d. No current distribution, in which case the accumulated balance must remain in
12 the plan until the former participating member or refund beneficiary elects a
13 method or methods of distribution under this section, to the extent allowed by
14 federal law.

15 A surviving spouse beneficiary may elect one or a combination of several of the
16 methods of distribution provided in subdivision a, b, or c. A beneficiary who is not
17 the surviving spouse may only choose a lump sum distribution of the accumulated
18 balance.

- 19 4. If the former participating member's vested account balance is less than one
20 thousand dollars, the board shall automatically refund the member's vested
21 account balance upon termination of employment. The member may waive the
22 refund if the member submits a written statement to the board, within one hundred
23 twenty days after termination, requesting that the member's vested account
24 balance remain in the plan.

25 **15-39.3-14. Disability benefits.** The board shall allow distribution of the participating
26 member's vested account balance if the board determines that the participating member has
27 become totally and permanently disabled. If approved, the disabled member has the same
28 distribution options as provided in subdivisions a and c of subsection 3 of section 15-39.3-13.
29 However, if the member chooses the periodic distribution option, the member may receive
30 distributions only for as long as the disability continues and the member submits the necessary
31 documentation and undergoes medical testing required by the board, or for as long as the

1 member participates in a rehabilitation program required by the board, or both. If the board
2 determines that a member no longer meets the eligibility definition, the board shall discontinue
3 the disability retirement benefit.

4 **15-39.3-15. Board to provide information.** The board shall provide information to
5 participating members under this chapter. The information must include at a minimum the
6 employee's current account balance, administrative and investment costs, and coordination of
7 benefits information. Notwithstanding any other provision of law, the board is not liable for any
8 investment decision made by an employee based upon information provided to an employee
9 under this chapter.

10 **15-39.3-16. State income tax deductions.** For the purposes of state income tax, the
11 assessment imposed by this chapter on the employee must be treated in accordance with
12 existing state statutes on state income tax.

13 **15-39.3-17. Exemption from state premium tax.** Premiums, consideration for
14 annuities, and membership fees are exempt from premium taxes payable pursuant to section
15 26.1-03-17.

16 **15-39.3-18. Savings clause.** If the board determines that any section of this chapter
17 does not comply with applicable federal statutes or rules, the board shall adopt appropriate
18 terminology with respect to that section as will comply with those federal statutes or rules. Any
19 plan modifications made by the board pursuant to this section are effective until the effective
20 date of any measure enacted by the legislative assembly providing the necessary amendments
21 to this chapter to ensure compliance with the federal statutes or rules.

22 **15-39.3-19. Overpayments.** The board has the right of setoff to recover overpayments
23 made under this chapter and to satisfy any claims arising from embezzlement or fraud
24 committed by a participating member, refund beneficiary, or other person who has a claim to a
25 distribution or any other benefit from a plan governed by this chapter.

26 **15-39.3-20. Correction of records.** The board shall correct errors in the records and
27 actions in plans under this chapter and shall seek to recover overpayments and shall seek to
28 collect underpayments.