

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1134
(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 of member tiers under the teachers' fund for retirement; to amend and reenact subsection 1 of section 15-39.1-09, subsection 1 of section 15-39.1-10, and sections 15-39.1-12, 15-39.1-18, 15-39.1-19.1, and 15-39.1-19.2 of the North Dakota Century Code, relating to employee and employer contribution requirements, eligibility for normal unreduced retirement benefits, eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the teachers' fund for retirement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 15-39.1-04 of the North Dakota Century Code are created and enacted as follows:

"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.

"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.

SECTION 2. 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 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 ninety percent. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

SECTION 3. AMENDMENT. Subsection 1 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

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 earned three years of teaching service credit and who have attained the age of sixty-five years.~~
 - b. ~~All tier one grandfathered 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~~one nongrandfathered members and tier two members who are at least sixty years of age and who have combined total of years of service credit and years of age which equals or exceeds ninety.
 - 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.~~

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

15-39.1-12. Early reduced retirement benefits.

~~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 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.~~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.

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

15-39.1-18. Disability retirements.

1. Any member may also retire and receive a disability annuity if, after a period of at least ~~one year~~five years of service as a member in this state, the member ~~suffers from~~qualifies for total disability as determined by the board.
2. The amount of the disability annuity is the ~~greater of the~~ amount computed by the retirement formula in section 15-39.1-10 without consideration of age ~~or the amount computed by that formula without consideration of age but assuming the member had twenty years of credited service~~. 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 level retirement income with social security option or 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.

SECTION 6. AMENDMENT. Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

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 reemployed retiree's contract as follows:
 - (1) Retiree reemployment of nine months or less, annual limit is seven hundred hours;
 - (2) Retiree reemployment of ten months, annual limit is eight hundred hours;
 - (3) Retiree reemployment of eleven months, annual limit is nine hundred hours; or
 - (4) Retiree reemployment of twelve months, annual limit is one thousand hours.
- b. Employment as a noncontracted substitute teacher does not apply to the annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit.
- 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. ~~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.~~
- d. A retired member who returns to teaching shall pay the member contributions required by section 15-39.1-09 ~~on these earnings~~the salary received by the retired member ~~after reaching the annual hour limit. 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 ~~both before and after the retired member reaches the annual hour limit.~~
 - 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 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.
 - 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 retired teacher's subsequent retirement, the member's benefit must be resumed as follows:
- a. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's contributions paid to the fund after the member's benefit was suspended must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity, plus any postretirement benefit adjustments granted during the period of reemployment, the first day of the month following the teacher's re-retirement.
 - b. If the teacher subsequently retires with two or more but less than five years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity computed according to this chapter based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received. The new annuity is payable the first day of the month following the member's re-retirement.
 - c. If the teacher subsequently retires with five or more years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity plus an additional annuity based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity based on all years of service computed under subsection 2 of section 15-39.1-10. The new annuity is payable the first day of the month following the member's re-retirement.

SECTION 7. 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;
 - 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; and
 - 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~~ shall pay the ~~employee assessment~~ 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 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 8. EFFECTIVE DATE. Sections 6 and 7 of this Act become effective July 1, 2012, and sections 3, 4, and 5 of this Act become effective July 1, 2013.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1134.

House Vote: Yeas 60 Nays 30 Absent 4

Senate Vote: Yeas 38 Nays 8 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State