

**Fifty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1101  
(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

AN ACT to amend and reenact subsection 4 of section 15-39.1-04, subdivision a of subsection 11 of section 15-39.1-04, and sections 15-39.1-16, 15-39.1-19.1, and 15-39.1-30 of the North Dakota Century Code, relating to definitions, annuities, participation by retired members who have resumed teaching, and confidentiality of records under the teachers' fund for retirement; 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 4 of section 15-39.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Contract" means a written agreement with ~~any~~ a school board or other governing body of ~~any~~ 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.

**SECTION 2. AMENDMENT.** Subdivision a of subsection 11 of section 15-39.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. All persons licensed ~~to teach in this state~~ by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services ~~in any~~ by a state institution ~~or by any~~ special education unit, school board, or other governing body of any a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state. 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, special education unit, school board, or other governing body of a school district of this state under a third-party contract.

**SECTION 3. AMENDMENT.** Section 15-39.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Option one. Upon the death of the teacher, the reduced retirement allowance must be continued throughout the life of, and paid to, the person as the teacher has nominated by written designation filed with the board at the time of retirement. If the person 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 person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if the person designated dies on or after July 1, 1989, must begin on the first day of the month following the death of the person designated.

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 person as the teacher has nominated by written designation filed with the board at the time of retirement. If the person 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 person designated died prior to 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 person designated.

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

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 person as the teacher has nominated by written designation filed with the board.

Option five. Level retirement income with social security option, which is available to teachers retiring before social security is payable.

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 ~~any designated as beneficiary~~, must 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 person'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.

**SECTION 4. AMENDMENT.** Section 15-39.1-19.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.1. (Effective after ~~January 29, 2003~~ July 31, 2005) Annuities discontinued on resumption of teaching.** 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 ~~sixty~~ thirty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment for a maximum of ~~ninety working days~~ seven hundred hours per year and continue receiving a monthly retirement benefit. ~~For purposes of this section, a working day is four or more hours of teaching. Employment as a substitute teacher does not apply to the seven hundred-hour restriction.~~ The board may waive this restriction in emergency situations.

Should the retired member's employment exceed the ~~ninety-day~~ seven hundred-hour maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office ~~will result~~ 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 ~~ninety-day~~ seven hundred-hour maximum.

~~Any~~ A retired member who returns to teaching shall pay the required assessments on those earnings received by the retired member after the ~~ninety-day~~ seven hundred-hour maximum. The employer shall pay the required contributions in a like manner.

Upon the retired teacher's subsequent retirement, the member's benefit must be resumed as follows:

1. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's assessments paid to the fund 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.
2. If the teacher subsequently retires with two or more ~~than two~~ 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.

3. 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.

**(Effective from January 29, 2001, through ~~January 29, 2003~~ July 31, 2005) Annuities discontinued on resumption of teaching.**

1. 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 ~~sixty~~ thirty calendar days have elapsed from the member's retirement date. Except as otherwise provided in this section, a retired member may then return to covered employment for a maximum of ~~ninety working days~~ seven hundred hours per year and continue receiving a monthly retirement benefit. ~~For purposes of this section, a working day is four or more hours of teaching. Employment as a substitute teacher does not apply to the seven hundred-hour restriction.~~ The board may waive this restriction in emergency situations. Should the retired member's employment exceed the ~~ninety-day~~ seven hundred-hour maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office ~~will result~~ results in the loss of one month's annuity benefit. Except as otherwise provided in this section, the retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the ~~ninety-day~~ seven hundred-hour maximum. A retired member who returns to teaching shall pay the required assessments on those earnings received by the retired member after the ~~ninety-day~~ seven hundred-hour maximum. The employer shall pay the required contributions in a like manner.
2. A retired member may return to teaching for up to one year without losing any benefits provided at least fifty percent of the salary earned by that person is placed in a school district's educational foundation or a private educational foundation. Employee and employer assessments under this arrangement must be paid by the person's employer. Assessments must be paid on the total salary earned by the retired member without regard to the amount of money placed in an educational foundation. A retired member reemployed under the provisions of this subsection must be treated as retired for all other purposes under this chapter. Notwithstanding subdivision a of subsection 3, a retired member may not earn any additional service during the period of reemployment. The member's benefits may not be adjusted to reflect changes in the member'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, additional benefits normally available to an active member, such as disability benefits, are not available to a retired member reemployed under this subsection, and refunds may not be made to a retired member at the end of that person's period of reemployment. For purposes of this subsection, a school district's educational foundation must be a nonprofit or charitable organization exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].
3. 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 assessments paid to the fund 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 ~~than two~~ 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 5. AMENDMENT.** Section 15-39.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-30. Confidentiality of records.** ~~Information pertaining to a teacher's retirement assessments and accumulated interest, disability applications and benefits, and surviving spouse applications and benefits~~ All records relating to the retirement benefits of a member or a beneficiary under this chapter is are confidential and is are not a public record 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.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1101.

House Vote:      Yeas    93      Nays    0      Absent    5

Senate Vote:    Yeas    47      Nays    0      Absent    2

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2001.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2001.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2001,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State