

**HOUSE BILL NO. 1068**

Introduced by

Government and Veterans Affairs Committee

(At the request of the Teachers' Fund for Retirement)

1 A BILL for an Act to create and enact a new section to chapter 15-39.1 of the North Dakota  
2 Century Code, relating to teachers' fund for retirement compliance with the Internal Revenue  
3 Code; and to amend and reenact subsection 9 of section 15-39.1-04, subsection 4 of section  
4 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-19.2, and 15-39.1-20 of the North Dakota  
5 Century Code, relating to incorporation of Internal Revenue Code changes since the last  
6 enactment of those provisions into state law, retired teachers returning to work, and teachers'  
7 fund for retirement compliance with the Internal Revenue Code.

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

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

11 9. "Salary" means a member's earnings in eligible employment under this chapter for  
12 teaching, supervisory, administrative, and extracurricular services during a school  
13 year reported as salary on the member's federal income tax withholding  
14 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.  
15 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, 2005. "Salary"  
16 includes bonus amounts paid to members for performance, retention, experience,  
17 and other service-related bonuses, unless amounts are conditioned on or made in  
18 anticipation of an individual member's retirement or termination. The annual salary  
19 of each member taken into account in determining benefit accruals and  
20 contributions may not exceed the annual compensation limits established under  
21 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2005, as adjusted for increases in  
22 the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1,  
23 2005. A salary maximum is not applicable to members whose participation began  
24 before July 1, 1996. "Salary" does not include:

- 1           a. Fringe benefits or side, nonwage, benefits that accompany or are in addition  
2           to a member's employment, including insurance programs, annuities,  
3           transportation allowances, housing allowances, meals, lodging, or expense  
4           allowances, or other benefits provided by a member's employer.
- 5           b. Insurance programs, including medical, dental, vision, disability, life, long-term  
6           care, workforce safety and insurance, or other insurance premiums or  
7           benefits.
- 8           c. Payments for unused sick leave, personal leave, vacation leave, or other  
9           unused leave.
- 10          d. Early retirement incentive pay, severance pay, or other payments conditioned  
11          on or made in anticipation of retirement or termination.
- 12          e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- 13          f. Amounts received by a member in lieu of previously employer-provided  
14          benefits or payments that are made on an individual selection basis.
- 15          g. Recruitment bonuses.
- 16          h. Other benefits or payments not defined in subdivisions a through g which the  
17          board determines to be ineligible teachers' fund for retirement salary.

18           **SECTION 2. AMENDMENT.** Subsection 4 of section 15-39.1-10 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20           4. Retirement benefits must begin no later than April first of the calendar year  
21           following the year the member attains age seventy and one-half or April first of the  
22           calendar year following the year the member terminates covered employment,  
23           whichever is later. Payments must be made over a period of time which does not  
24           exceed the life expectancy of the member or the joint life expectancy of the  
25           member and the beneficiary. Payment of minimum distributions must be made in  
26           accordance with section 401(a)(9) of the Internal Revenue Code in effect on  
27           August 1, 2005, and the regulations issued under that section, as applicable to  
28           governmental plans.

29           **SECTION 3. AMENDMENT.** Section 15-39.1-10.6 of the North Dakota Century Code  
30 is amended and reenacted as follows:

1           **15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating  
2 under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum  
3 benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on  
4 August 1, ~~2003~~ 2005, for governmental plans. This section does not constitute an election  
5 under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] in effect on  
6 August 1, ~~2003~~ 2005.

7           **SECTION 4. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code  
8 is amended and reenacted as follows:

9           **15-39.1-19.2. (~~Effective through July 31, 2005~~) Retired teachers return to active**  
10 **service - Critical shortage areas and disciplines - Rules.**

- 11           1. A retired teacher who is receiving a retirement annuity under chapter 15-39,  
12           15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits  
13           under the provisions of this section or elect to return to teaching under the  
14           provisions of section 15-39.1-19.1. To return to teaching under this section, a  
15           retired teacher must:
- 16           a. Return to teach in a critical shortage geographical area or subject discipline  
17           as determined by the education standards and practices board by rule; and  
18           b. If retired after January 1, 2001, have been receiving a retirement annuity for at  
19           least one year. A retired teacher may perform noncontracted substitute  
20           teaching duties but may not engage in full-time or part-time teaching duties  
21           during the one-year separation from service.
- 22           2. A retired teacher who returns to teaching under this section is not required to pay  
23           the employee assessment required by section 15-39.1-09. A retired teacher who  
24           returns to teaching under the provisions of this section must be treated as retired  
25           for all other purposes under this chapter. A retired teacher may not earn any  
26           additional service during the period of reemployment. The retired teacher's  
27           benefits may not be adjusted to reflect changes in the retired teacher's age or final  
28           average monthly salary at the end of the period of reemployment, any optional  
29           form of payment elected under section 15-39.1-16 remains effective during and  
30           after the period of reemployment, and additional benefits normally available to an

1 active member, such as disability benefits, are not available to a retired teacher  
2 reemployed under this section.

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

5 **15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible  
6 under the terms of this chapter to participate in the fund, the member may, after a period of one  
7 hundred twenty days, withdraw from the fund and is then entitled to receive a refund of  
8 assessments accumulated with interest. The one-hundred-twenty-day requirement may be  
9 waived by the board when it has evidence the teacher will not be returning to teach in North  
10 Dakota. The refund is in lieu of any other benefits to which the member may be entitled under  
11 the terms of this chapter. The accumulated assessments of a member who ceases to be  
12 eligible to participate in the fund before becoming vested must be automatically refunded. The  
13 assessments plus interest earned, if not claimed by the member, must be returned in the fiscal  
14 year following the date of termination. The automatic refund must be waived provided the  
15 member presents the board with a statement of intent to return to teach in North Dakota within  
16 thirty-six months after eligibility to participate in the fund ceases. The board may waive the  
17 automatic refund for members who present to the board a statement of intent to return to teach  
18 in North Dakota within a period exceeding thirty-six months after eligibility to participate in the  
19 fund ceases. A member may elect, at the time and under rules adopted by the board, to have  
20 any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible  
21 retirement plan specified by the member as allowed under section 401(a)(31) of the Internal  
22 Revenue Code in effect on August 1, ~~2003~~ 2005.

23 **SECTION 6.** A new section to chapter 15-39.1 of the North Dakota Century Code is  
24 created and enacted as follows:

25 **Internal Revenue Code compliance.** The board shall administer the plan in  
26 compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of  
27 the Internal Revenue Code and regulations adopted pursuant to those provisions as they apply  
28 to governmental plans.