

**SENATE BILL NO. 2046  
with House Amendments**

Sixtieth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2046**

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 two new subsections to section 15-39.1-04 of the North  
2 Dakota Century Code, relating to definitions under the teachers' fund for retirement; to amend  
3 and reenact subsection 9 of section 15-39.1-04, subsection 1 of section 15-39.1-09, section  
4 15-39.1-10, subdivision c of subsection 1 of section 15-39.1-10.3, sections 15-39.1-10.6,  
5 15-39.1-11, 15-39.1-12, and 15-39.1-15, subsection 1 of section 15-39.1-19.1, sections  
6 15-39.1-19.2 and 15-39.1-20, and subsection 2 of section 15-39.1-33 of the North Dakota  
7 Century Code, relating to the incorporation of federal law changes, employer contributions and  
8 service credit purchases, eligibility for and determination of benefits, vesting, early retirement,  
9 returning to teaching, and accepting a refund from the fund under the teachers' fund for  
10 retirement; to provide for application; to provide an appropriation; and to provide an expiration  
11 date.

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

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

15 9. "Salary" means a member's earnings in eligible employment under this chapter for  
16 teaching, supervisory, administrative, and extracurricular services during a school  
17 year reported as salary on the member's federal income tax withholding  
18 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.  
19 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on ~~August~~ July 1, 2005 2007.  
20 "Salary" includes bonus amounts paid to members for performance, retention,  
21 experience, and other service-related bonuses, unless amounts are conditioned on  
22 or made in anticipation of an individual member's retirement or termination. The  
23 annual salary of each member taken into account in determining benefit accruals  
24 and contributions may not exceed the annual compensation limits established

1 under 26 U.S.C. 401(a)(17)(B) in effect on ~~August~~ July 1, 2005 2007, as adjusted  
2 for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in  
3 effect on ~~August~~ July 1, 2005 2007. A salary maximum is not applicable to  
4 members whose participation began before July 1, 1996. "Salary" does not  
5 include:

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

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

25 "Tier one member" means a teacher who has credit in the system on July 1, 2007,  
26 and has not taken a refund pursuant to section 15-39.1-20 after June 30, 2007.

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

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

- 30 1. Except as otherwise provided in subsection 2 of section 15-39.1-10.3 and  
31 subsection 3 by law, every teacher is a member of the fund and must be assessed

1           upon the teacher's salary seven and seventy-five hundredths percent per annum,  
2           which must be deducted, certified, and paid monthly to the fund by the disbursing  
3           official of the governmental body by which the teacher is employed. ~~Every~~ Except  
4           as otherwise provided by law, every governmental body employing a teacher shall  
5           pay to the fund ~~seven~~ eight and seventy-five hundredths percent per annum of the  
6           salary of each teacher employed by it. The disbursing official of the governmental  
7           body shall certify the governmental body payments and remit the payments  
8           monthly to the fund.

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

11          **15-39.1-10. Eligibility for normal retirement benefits.**

- 12          1. The following members are eligible to receive monthly lifetime normal retirement  
13          benefits under this section:
- 14           a. All tier one members who have earned three years of teaching service credit  
15           and who have attained the age of sixty-five years.
  - 16           b. All tier one members who have earned three years of teaching service credit  
17           and who have a combined total of years of service credit and years of age  
18           which equals or exceeds eighty-five.
  - 19           c. All tier two members who have earned three years of teaching service credit  
20           and who have attained the age of sixty-five years.
  - 21           d. All tier two members who have earned three years of teaching service credit  
22           and who have a combined total of years of service credit and years of age  
23           which equals or exceeds ninety.
- 24          2. The amount of retirement benefits is two percent of the final average monthly  
25          salary of the member multiplied by the number of years of credited service. For  
26          the purposes of this subsection, final average monthly salary for a tier one member  
27          means one thirty-sixth of the total of the member's highest annual salaries earned  
28          between July first of a calendar year and June thirtieth of the subsequent calendar  
29          year for any three years of service credit under the fund. For purposes of this  
30          subsection, final average monthly salary for a tier two member means one sixtieth  
31          of the total of the member's highest annual salaries earned between July first of a

1           calendar year and June thirtieth of the subsequent calendar year for any five years  
2           of service credit under the fund.

- 3           3. Notwithstanding any other provision of this section, no member who retired on  
4           July 1, 1993, or after and is eligible to receive benefits under former chapter 15-39,  
5           chapter 15-39.1, or section 15-39.2-02, may receive benefits which are less than:  
6           a. Ten dollars per month per year of teaching to twenty-five years.  
7           b. Fifteen dollars per month per year of teaching over twenty-five years.
- 8           4. Retirement benefits must begin no later than April first of the calendar year  
9           following the year the member attains age seventy and one-half or April first of the  
10          calendar year following the year the member terminates covered employment,  
11          whichever is later. Payments must be made over a period of time which does not  
12          exceed the life expectancy of the member or the joint life expectancy of the  
13          member and the beneficiary. Payment of minimum distributions must be made in  
14          accordance with section 401(a)(9) of the Internal Revenue Code in effect on  
15          ~~August~~ July 1, 2005 2007, and the regulations issued under that section, as  
16          applicable to governmental plans.

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

- 19          c. Pursuant to rules adopted by the board, a teacher who has service credit in  
20          the fund and in any number of the alternate plans described in paragraphs 1  
21          and 2 of subdivision a is entitled to benefits under this chapter.
- 22           (1) A ~~teacher~~ tier one member may elect to have benefits calculated using  
23           the benefit formula in subsection 2 of section 15-39.1-10 under either of  
24           the following calculation methods:
- 25           ~~(1)~~ (a) Using the three highest certified fiscal year salaries of this plan in  
26           the computation of final average salary and all service credit  
27           earned in this plan; or
- 28           ~~(2)~~ (b) Using the three highest certified fiscal year salaries of this plan  
29           combined with the alternate plan in the computation of final  
30           average salary and service credit not to exceed one year in any

1 fiscal year when combined with the service credit earned in the  
2 alternate retirement plan.

3 (2) A tier two member may elect to have benefits calculated using the  
4 benefit formula in subsection 2 of section 15-39.1-10 under either of the  
5 following calculation methods:

6 (a) Using the five highest certified fiscal year salaries of this plan in  
7 the computation of final average salary and all service credit  
8 earned in this plan; or

9 (b) Using the five highest certified fiscal year salaries of this plan  
10 combined with the alternate plan in the computation of final  
11 average salary and service credit not to exceed one year in any  
12 fiscal year when combined with the service credit earned in the  
13 alternate retirement plan.

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

16 **15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating  
17 under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum  
18 benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on  
19 ~~August~~ July 1, 2005 ~~2007~~, for governmental plans. ~~This section does not constitute an election~~  
20 ~~under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] in effect~~  
21 ~~on August 1, 2005.~~

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

24 **15-39.1-11. Vesting of rights.** When ~~any~~ a tier one member or a tier two member has  
25 paid assessments and earned three years of service credit in this state, that member has a  
26 vested right to a retirement annuity but is not entitled to payments under this chapter until the  
27 member meets the requirements set forth in section 15-39.1-10 or 15-39.1-12.

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

30 **15-39.1-12. Early retirement.** ~~Any teacher~~ A tier one member who has acquired a  
31 vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age

1 fifty-five may retire prior to the normal retirement age as set forth ~~herein~~ in section 15-39.1-10  
2 but the benefits to which the member is then entitled must be reduced to the actuarial  
3 equivalent of the benefit credits earned to the date of early retirement from the earlier of age  
4 sixty-five or the age at which current service plus age equals eighty-five. A tier two member  
5 who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and  
6 who has attained age fifty-five may retire prior to the normal retirement age as set forth in  
7 section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the  
8 actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier  
9 of age sixty-five or the age at which current service plus age equals ninety.

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

12 **15-39.1-15. Withdrawal from fund - Return to teaching.** ~~Any~~ A teacher who has  
13 withdrawn from the fund as set forth in this chapter may, by returning to teach in a public school  
14 or state institution of this state, regain service credit for prior teaching by making the required  
15 payment. The required payment, if made within five years of returning to teach in covered  
16 employment, is the amount that was withdrawn with interest. In all other cases, the purchase  
17 cost must be on an actuarial equivalent basis. If the teacher returns to teach in covered  
18 employment after June 30, 2007, the teacher becomes a tier two member regardless of  
19 whether the teacher repurchases service credit earned while the teacher was a tier one  
20 member.

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

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

- 1           b.    Retiree reemployment of ten months, annual limit is eight hundred hours;  
2           c.    Retiree reemployment of eleven months, annual limit is nine hundred hours;  
3           or  
4           d.    Retiree reemployment of twelve months, annual limit is one thousand hours.

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

8           The retired member and the retired member's employer must notify the fund  
9           office in writing within thirty days of the retired member's return to covered  
10          employment. Should the retired member's employment exceed the annual hour  
11          limit, the retired member must immediately notify the fund office in writing. Failure  
12          to notify the fund office results in the loss of one month's annuity benefit. The  
13          retired member's monthly benefit must be discontinued the first of the month  
14          following the date the member reaches the annual hour limit.

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

19          A participating employer who employs a retired member under this section  
20          shall pay the employer contributions required by section 15-39.1-09 on the salary  
21          of the retired member both before and after the retired member reaches the annual  
22          hour limit.

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

25          **15-39.1-19.2. Retired teachers return to active service - Critical shortage areas**  
26          **and disciplines - Rules.**

- 27          1.    A retired teacher who is receiving a retirement annuity under chapter 15-39,  
28          15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits  
29          under the provisions of this section or elect to return to teaching under the  
30          provisions of section 15-39.1-19.1. To return to teaching under this section, a  
31          retired teacher must:

- 1           a. Return to teach in a critical shortage geographical area or subject discipline  
2           as determined by the education standards and practices board by rule; and  
3           b. If retired after January 1, 2001, have been receiving a retirement annuity for  
4           at least one year. A retired teacher may perform noncontracted substitute  
5           teaching duties but may not engage in full-time or part-time teaching duties  
6           during the one-year separation from service.  
7           c. Notify the fund office in writing within thirty days of the retired member's return  
8           to covered employment. The retired member's employer must also notify the  
9           fund office in writing within thirty days of the retired member's return to  
10          covered employment.
- 11          2. A retired teacher who returns to teaching under this section is not required to pay  
12          the employee assessment required by section 15-39.1-09. A retired teacher who  
13          returns to teaching under the provisions of this section must be treated as retired  
14          for all other purposes under this chapter. A retired teacher may not earn any  
15          additional service during the period of reemployment. The retired teacher's  
16          benefits may not be adjusted to reflect changes in the retired teacher's age or final  
17          average monthly salary at the end of the period of reemployment, any optional  
18          form of payment elected under section 15-39.1-16 remains effective during and  
19          after the period of reemployment, and additional benefits normally available to an  
20          active member, such as disability benefits, are not available to a retired teacher  
21          reemployed under this section.
- 22          3. A participating employer who employs a retired member under this section shall  
23          pay the employer contributions required by section 15-39.1-09 on the salary of the  
24          retired member.

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

27          **15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible  
28          under the terms of this chapter to participate in the fund, the member may, after a period of one  
29          hundred twenty days, withdraw from the fund and is then entitled to receive a refund of  
30          assessments accumulated with interest. The one-hundred-twenty-day requirement may be  
31          waived by the board when it has evidence the teacher will not be returning to teach in North



1 Dakota. The refund is in lieu of any other benefits to which the member may be entitled under  
2 the terms of this chapter, and by accepting the refund, the member is waiving any right to  
3 participate in the fund under the same provisions that existed at the time the refund was  
4 accepted regardless of whether the member later repurchases refunded service credit. The  
5 ~~accumulated assessments of a member who ceases to be eligible to participate in the fund~~  
6 ~~before becoming vested must be automatically refunded. The assessments plus interest~~  
7 ~~earned, if not claimed by the member, must be returned in the fiscal year following the date of~~  
8 ~~termination. The automatic refund must be waived provided the member presents the board~~  
9 ~~with a statement of intent to return to teach in North Dakota within thirty six months after~~  
10 ~~eligibility to participate in the fund ceases. The board may waive the automatic refund for~~  
11 ~~members who present to the board a statement of intent to return to teach in North Dakota~~  
12 ~~within a period exceeding thirty six months after eligibility to participate in the fund ceases. A~~  
13 member may elect, at the time and under rules adopted by the board, to have any portion of an  
14 eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan  
15 specified by the member as allowed under section 401(a)(31) of the Internal Revenue Code in  
16 effect on ~~August~~ July 1, 2005 2007.

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

- 19 2. The member must meet one of the following conditions at the time the purchase is  
20 made:
- 21 a. The tier one member's age plus service credit must be equal to or greater  
22 than seventy-seven; ~~or~~
  - 23 b. The tier one member's age must be at least fifty-five and the member must  
24 have at least three years of service credit; or
  - 25 c. The tier two member's age plus service credit must be equal to or greater  
26 than eighty-two; or
  - 27 d. The tier two member's age must be at least fifty-five and the member must  
28 have at least three years of service credit.

29 **SECTION 14. APPLICATION.** This Act applies to salaries earned on and after July 1,  
30 2007.

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

5           **SECTION 16. EXPIRATION DATE.** Section 3 of this Act is effective until the ratio of  
6 the actuarial value of assets to the actuarial accrued liability of the teachers' fund for retirement  
7 increases to ninety-five percent based upon the actuarial value of assets. The board of  
8 trustees of the teachers' fund for retirement shall notify the legislative council of the expiration  
9 date of section 3 of this Act.