

Sixty-third
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

(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 plan modifications to the teachers' fund for retirement required to
3 maintain compliance with federal statutes or rules; and to amend and reenact section
4 15-39.1-04, subsection 4 of section 15-39.1-10, and sections 15-39.1-10.6 and 15-39.1-11 of
5 the North Dakota Century Code, relating to the definition of normal retirement age and revising
6 the definitions of actuarial equivalent and salary, incorporation of federal law changes, and
7 modification of vesting of rights provisions under the teachers' fund for retirement.

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

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

11 **15-39.1-04. Definitions.**

12 For purposes of this chapter, unless the context or subject matter otherwise requires:

- 13 1. "Actuarial equivalent" means the ~~annual amount determined by calculations based on~~
14 ~~mortality tables, purchasable with a given amount at a stated age~~calculated to be of
15 equal actuarial value to the benefit otherwise payable when computed on the basis of
16 actuarial assumptions and methods adopted by the board.
- 17 2. "Beneficiary" means a person, estate, trust, or organization designated in writing by a
18 participating member to receive benefits provided by this plan, in receipt of benefits, or
19 otherwise provided under section 15-39.1-17.
- 20 3. "Board" means the board of trustees of the teachers' fund for retirement.
- 21 4. "Contract" means a written agreement with a school board or other governing body of
22 a school district or special education unit of this state or a letter of appointment by a
23 state institution, state agency, or other employer participating in the fund.
- 24 5. "Fund" means the teachers' fund for retirement.

- 1 6. "Interest" as applied to member assessments is an annual rate of six percent
2 compounded monthly and as applied to the repurchase of credit for withdrawn years is
3 six percent compounded annually.
- 4 7. "Normal retirement age" means the age at which a member becomes eligible for
5 monthly lifetime normal unreduced retirement benefits as provided in subsection 1 of
6 section 15-39.1-10.
- 7 8. "Retirement" means cessation of covered employment and acceptance of a benefit
8 under former chapter 15-39, or chapter 15-39.1 or 15-39.2.
- 9 ~~8-9.~~ "Retirement annuity" means the payments made by the fund to a member after
10 retirement, these payments beginning on the first or fifteenth day of the month
11 following eligibility for a benefit.
- 12 ~~9-10.~~ "Salary" means a member's earnings in eligible employment under this chapter for
13 teaching, supervisory, administrative, and extracurricular services during a ~~school plan~~
14 year reported as salary on the member's federal income tax withholding statements
15 plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f),
16 401(k), 403(b), 414(h), or 457 in effect on August 1, ~~2011~~2013. "Salary" includes
17 amounts paid to members for performance of duties, unless amounts are conditioned
18 on or made in anticipation of an individual member's retirement or termination. The
19 annual salary 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, ~~2011~~2013, 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 ~~2011~~2013. A salary maximum is not applicable to members whose participation began
24 before July 1, 1996. "Salary" does not include:
- 25 a. Fringe benefits or side, nonwage, benefits that accompany or are in addition to a
26 member's employment, including insurance programs, annuities, transportation
27 allowances, housing allowances, meals, lodging, or expense allowances, or other
28 benefits provided by a member's employer.
- 29 b. Insurance programs, including medical, dental, vision, disability, life, long-term
30 care, workforce safety and insurance, or other insurance premiums or benefits.

- c. Payments for unused sick leave, personal leave, vacation leave, or other unused leave.
 - d. Early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination.
 - e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
 - f. Amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis.
 - g. Signing bonuses as defined under section 15.1-09-33.1.
 - h. Other benefits or payments not defined in this section which the board determines to be ineligible teachers' fund for retirement salary.
- ~~40:11.~~ "State institution" includes North Dakota vision services - school for the blind, the school for the deaf, and the North Dakota youth correctional center.
- ~~44:12.~~ "Teacher" means:
- a. All persons licensed by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services by a state institution, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers. 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, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state under a third-party contract.
 - b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the department of career and technical education, the professional staff of the center for distance education, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff

- 1 of an interim school district, and the professional staff of the North Dakota high
2 school activities association who are members of the fund on July 1, 1995.
- 3 c. The executive director and professional staff of the North Dakota council of
4 school administrators who are members of the fund on July 1, 1995, and licensed
5 staff of teachers centers, but only if the person was previously a member of and
6 has credits in the fund.
- 7 d. Employees of institutions under the control and administration of the state board
8 of higher education who are members of the fund on July 16, 1989.
- 9 ~~12.13.~~ "Tier one grandfathered member" for purposes of sections 15-39.1-10 and 15-39.1-12
10 means a tier one member who, as of June 30, 2013, is vested as a tier one member in
11 accordance with section 15-39.1-11; and
- 12 a. Is at least fifty-five years of age; or
- 13 b. Has a combined total of years of service credit in the plan and years of age which
14 equals or exceeds sixty-five.
- 15 ~~13.14.~~ "Tier one member" means a teacher who has credit in the system on July 1, 2008, and
16 has not taken a refund pursuant to section 15-39.1-20 after June 30, 2008.
- 17 ~~14.15.~~ "Tier one nongrandfathered member" for purposes of sections 15-39.1-10 and
18 15-39.1-12 means a tier one member who does not qualify as a tier one
19 grandfathered member.
- 20 ~~15.16.~~ "Tier two member" means a teacher who is not a tier one member.

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

- 23 4. Retirement benefits must begin no later than April first of the calendar year following
24 the year the member attains age seventy and one-half or April first of the calendar
25 year following the year the member terminates covered employment, whichever is
26 later. Payments must be made over a period of time which does not exceed the life
27 expectancy of the member or the joint life expectancy of the member and the
28 beneficiary. Payment of minimum distributions must be made in accordance with
29 section 401(a)(9) of the Internal Revenue Code in effect on August 1, ~~2011~~2013, and
30 the regulations issued under that section, as applicable to governmental plans.

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

3 **15-39.1-10.6. Benefit limitations.**

4 Benefits with respect to a member participating under former chapter 15-39 or chapter
5 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the
6 Internal Revenue Code [26 U.S.C. 415] in effect on August 1, ~~2011~~2013, for governmental
7 plans. The maximum dollar benefit applicable under section 415(b)(1)(A) of the Internal
8 Revenue Code must reflect any increases in this amount provided under section 415(d) of the
9 Internal Revenue Code subsequent to August 1, ~~2011~~2013. If a member's benefit is limited by
10 these provisions at the time of retirement or in any subsequent year, the benefit paid in any
11 following calendar year may be increased to reflect all cumulative increases in the maximum
12 dollar limit provided under section 415(d) of the Internal Revenue Code for years after the year
13 payments commenced, but not to more than would have been payable in the absence of the
14 limits under section 415 of the Internal Revenue Code. If an annuitant's benefit is increased by
15 a plan amendment, after the commencement of payments, the member's benefit may not
16 exceed the maximum dollar benefit under section 415(b)(1)(A) of the Internal Revenue Code,
17 adjusted for the commencement age and form of payment, increased as provided by section
18 415(d) of the Internal Revenue Code. If this plan must be aggregated with another plan to
19 determine the effect of section 415 of the Internal Revenue Code on a member's benefit, and if
20 the benefit must be reduced to comply with section 415 of the Internal Revenue Code, then the
21 reduction must be made pro rata between the two plans, in proportion to the member's service
22 in each plan.

23 **SECTION 4. AMENDMENT.** Section 15-39.1-11 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **15-39.1-11. Vesting of rights.**

26 When a tier one member has ~~paid assessments and~~ earned three years of service credit in
27 this state, that member has a vested right to a retirement annuity but is not entitled to payments
28 under this chapter until the member meets the requirements set forth in section 15-39.1-10 or
29 15-39.1-12. When a tier two member has ~~paid assessments and~~ earned five years of service
30 credit in this state, that member has a vested right to a retirement annuity but is not entitled to
31 payments under this chapter until the member meets the requirements set forth in section

1 15-39.1-10 or 15-39.1-12. When a tier one or tier two member has attained normal retirement
2 age that member has a vested right to a retirement annuity under this chapter.

3 **SECTION 5.** A new section to chapter 15-39.1 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Savings clause - Plan modifications.**

6 If the board determines that any section of this chapter does not comply with applicable
7 federal statutes or rules, the board shall adopt appropriate terminology with respect to that
8 section as will comply with those federal statutes or rules, subject to the approval of the
9 employee benefits programs committee. Any plan modifications made by the board pursuant to
10 this section are effective until the effective date of any measure enacted by the legislative
11 assembly providing the necessary amendments to this chapter to ensure compliance with the
12 federal statutes or rules.