Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1258

Introduced by

Representatives Grande, Headland, Louser

Senators Andrist, G. Lee, Oehlke

A BILL for an Act to create and enact a new section to chapter 15-39.1 and chapter 15-39.3 of the North Dakota Century Code, relating to a defined contribution retirement plan for teachers; to amend and reenact sections 15-39.1-09 and 15-39.1-30 of the North Dakota Century Code, relating to a defined contribution retirement plan for teachers; to provide a penalty; to provide an appropriation; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Teachers' fund for retirement closed to new members.

Notwithstanding any other provision of law, after June 30, 2012, the teachers' fund for retirement plan established under this chapter is closed to new members.

SECTION 2. AMENDMENT. Section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-09. (Contingent expiration date - See note) Membership in fund and assessments - Employer payment of employee contribution.

1. Except as otherwise provided by law, every teacher first employed before July 1, 2012, 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. 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. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

2. Each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 1983. The amount paid must be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. A person, except the superintendent of public instruction, who is certified to teach in this state by the education standards and practices board and who is first employed and entered upon the payroll of the superintendent of public instruction after January 6, 2001, may elect to become a participating member of the public employees retirement system. An election made by a person to participate in the public employees retirement system under this subsection is irrevocable. ~~Nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, may elect to transfer to the public employees retirement system pursuant to section 54-52-02.13. Employees of the state board for career and technical education may elect to transfer to the public employees retirement system pursuant to section 54-52-02.14.~~

4. An individual who is first employed and entered upon the payroll of the state board for career and technical education after July 1, 2007, may elect to become a participating member of the public employees retirement system. An election made by an individual

to participate in the public employees retirement system under this subsection is irrevocable.

SECTION 3. 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.

All records relating to the retirement benefits of a member or a beneficiary under this chapter and chapter 15-39.3 are confidential and are not public 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.
8. A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.
9. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 15-39.1-12.2. The

information disclosed under this subsection must be limited to information necessary for drafting the order.

10. Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death. Information relating to beneficiaries may be disclosed to other beneficiaries of the same member.

11. The general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member.

12. Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.

13. A person if the information relates to an employer service purchase, but the information must be limited to the member's name and employer, the retirement program in which the member participates, the amount of service credit purchased by the employer, and the total amount expended by the employer for that service credit purchase. Information identified under this subsection may only be obtained from the member's employer.

SECTION 4. Chapter 15-39.3 of the North Dakota Century Code is created and enacted as follows:

15-39.3-01. Definition of terms.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the board of trustees of the teachers' fund for retirement.
2. "Eligible employee" means a teacher.
3. "Employer" means a governmental body employing a teacher.
4. "Participating member" means an eligible employee participating in the defined contribution retirement plan established under this chapter.
5. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, 2011. The term includes bonus amounts

paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2011, as adjusted for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2011. "Salary" does not include:

a. Fringe benefits or side, nonwage benefits that accompany or are in addition to a member's employment, including insurance programs, annuities, transportation allowances, housing allowances, meals, lodging, or expense allowances, or other benefits provided by a member's employer.

b. Insurance programs, including medical, dental, vision, disability, life, long-term 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. Recruitment bonuses.

h. Other benefits or payments not defined in subdivisions a through g which the board determines to be ineligible teachers' fund for retirement salary.

6. "Teacher" means:

a. Every person licensed by the education standards and practices board who is 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 superintendent, assistant superintendent, business manager, principal, assistant principal, and special teacher. For purposes of this subdivision, the term includes a person

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, every assistant superintendent of public instruction, every county superintendent, every assistant superintendent, every supervisor of instruction, the professional staff of the department of career and technical education, the professional staff of the center for distance education, and the professional staff of an interim school district.

15-39.3-02. Members.

An eligible employee who is first employed or who has withdrawn from the teachers' fund for retirement and is returning to covered employment, and who is entered upon the payroll of that individual's employer after June 30, 2012, is a member of the defined contribution retirement plan established under this chapter. A retiree who is receiving benefits under chapter 15-39.1 who returns to covered employment is not eligible to participate in the defined contribution plan and is subject to the provisions of sections 15-39.1-19.1 and 15-39.1-19.2.

15-39.3-03. Election.

The board shall provide an opportunity for members of the teachers' fund for retirement under chapter 15-39.1 to transfer to the defined contribution plan under chapter 15-39.3 pursuant to rules adopted by the board. An election made by a member of the teachers' fund for retirement under chapter 15-39.1 to transfer to the defined contribution plan under chapter 15-39.3 is irrevocable. For an individual who elects to transfer membership from the teachers' fund for retirement under chapter 15-39.1 to the defined contribution plan under chapter 15-39.3, the board shall transfer a lump sum amount from the teachers' fund for retirement to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made is ineffective and the individual remains a member of the teachers' fund for retirement under chapter 15-39.1 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred based upon the actuarial present value of the individual's accumulated benefit obligation under the teachers'

fund for retirement based on the assumption that the individual will retire under the earliest applicable normal retirement age.

15-39.3-04. Administration.

The board shall administer the defined contribution retirement plan established under this chapter and the board or vendors contracted for by the board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan. The board has the exclusive authority and responsibility to employ or contract with personnel and for services that the board determines necessary for the proper administration of and investment of assets of the plan, including managerial, professional, legal, clerical, technical, and administrative personnel or services. The board may enter cooperative agreements with the public employees retirement system board for defined contribution plan services.

15-39.3-05. Direction of investments.

Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board.

15-39.3-06. Administrative expenses - Continuing appropriation.

The administrative expenses of the plan must be paid by the participating members in a manner determined by the board. The board or vendors contracted for by the board may charge reasonable administrative expenses and deduct those expenses from a participating member's account in the defined contribution retirement plan established under this chapter. The board shall place any money deducted in an administrative expenses account with the state treasurer. All moneys in the administrative expenses account, not otherwise appropriated, or so much of the moneys as may be necessary, are appropriated to the board on a continuing basis for the purpose of retaining a consultant as required for the administration of this chapter.

15-39.3-07. Participation in other plans.

A participating member may not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. However, this section does not prohibit a participating member from participating in a retirement plan established by this state or other public sector employer under the federal Internal Revenue Code.

15-39.3-08. Contributions - Penalty.

1. Each participating member 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 participating member's account by the disbursing official of the governmental body by which the teacher is employed.
2. Every governmental body employing a teacher shall pay to the participating member's account eight and seventy-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the participating member's account.
3. Each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 2012. The amount paid must be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

15-39.3-09. Acceptance of rollovers.

The plan may allow a participating member to transfer or roll over funds from other qualified plans into the member's account under rules adopted by the board.

15-39.3-10. Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.

A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. A member must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. An employee shall make application to the employer for credit and provide a DD form 214 to verify service.

15-39.3-11. Vesting.

A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:

1. Upon completion of two years of service, fifty percent.
2. Upon completion of three years of service, seventy-five percent.
3. Upon completion of four years of service, one hundred percent.

A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

15-39.3-12. Refund beneficiaries.

A participating or former participating member may nominate one or more individuals as a refund beneficiary by filing written notice of nomination with the board. If the participating

member or former participating member is married at the time of the nomination and the participant's spouse is not the refund beneficiary for one hundred percent of the account, the nomination is not effective unless the nomination is signed by the participant's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

15-39.3-13. Qualified domestic relations orders.

1. The board or a vendor contracted for by the board shall apportion a participating member's account in the defined contribution retirement plan under this chapter in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules adopted by the board for determining the qualified status of domestic relations orders, administering distributions, and apportioning accounts under the qualified orders. Upon determination of the domestic relations order as qualified, the board shall notify the participating member, the named alternate payee, and the vendor, if applicable, of its receipt of the qualified domestic relations order.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, made pursuant to a North Dakota domestic relations law, which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of a participating member's account in the defined contribution retirement plan under this chapter. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise allowed under this chapter. However, a qualified domestic relations order may require distribution from an account in the defined contribution retirement plan under this chapter notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must specify:
    a. The name and last-known mailing address of the participating member and the name and the mailing address of each alternate payee covered by the order;

b. The amount or percentage of the participating member's account to be paid to each alternate payee;

c. The number of payments or period to which the order applies; and

d. Each retirement plan to which the order applies.

15-39.3-14. Distributions.

1. A participating member is eligible to receive distribution of that member's accumulated balance in the plan upon becoming a former participating member.

2. Upon the death of a participating member or former participating member, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

3. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:

   a. A lump sum distribution to the recipient.

   b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

   c. Periodic distributions, as authorized by the board.

   d. No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

   A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in subdivision a, b, or c. A beneficiary who is not the surviving spouse may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than one thousand dollars, the board shall automatically refund the member's vested account balance upon termination of employment. The member may waive the refund if the member

1 submits a written statement to the board, within one hundred twenty days after
2 termination, requesting that the member's vested account balance remain in the plan.
3 **15-39.3-15. Disability benefits.**
4 The board shall allow distribution of the participating member's vested account balance if
5 the board determines that the participating member has become totally and permanently
6 disabled. If approved, the disabled member has the same distribution options as provided in
7 subdivisions a and c of subsection 3 of section 15-39.3-14. However, if the member chooses
8 the periodic distribution option, the member may receive distributions only for as long as the
9 disability continues and the member submits the necessary documentation and undergoes
10 medical testing required by the board, or for as long as the member participates in a
11 rehabilitation program required by the board, or both. If the board determines that a member no
12 longer meets the eligibility definition, the board shall discontinue the disability retirement benefit.
13 **15-39.3-16. Board to provide information.**
14 The board shall provide information to participating members under this chapter. The
15 information must include at a minimum the employee's current account balance, administrative
16 and investment costs, and coordination of benefits information. Notwithstanding any other
17 provision of law, the board is not liable for any investment decision made by an employee based
18 upon information provided to an employee under this chapter.
19 **15-39.3-17. State income tax deductions.**
20 For the purposes of state income tax, the assessment imposed by this chapter on the
21 employee must be treated in accordance with existing state statutes on state income tax.
22 **15-39.3-18. Exemption from state premium tax.**
23 Premiums, consideration for annuities, and membership fees are exempt from premium
24 taxes payable pursuant to section 26.1-03-17.
25 **15-39.3-19. Savings clause.**
26 If the board determines that any section of this chapter does not comply with applicable
27 federal statutes or rules, the board shall adopt appropriate terminology with respect to that
28 section as will comply with those federal statutes or rules. Any plan modifications made by the
29 board pursuant to this section are effective until the effective date of any measure enacted by
30 the legislative assembly providing the necessary amendments to this chapter to ensure
31 compliance with the federal statutes or rules.

1 **15-39.3-20. Overpayments.**

2 The board has the right of setoff to recover overpayments made under this chapter and to
3 satisfy any claims arising from embezzlement or fraud committed by a participating member,
4 refund beneficiary, or other person who has a claim to a distribution or any other benefit from a
5 plan governed by this chapter.

6 **15-39.3-21. Correction of records.**

7 The board shall correct errors in the records and actions in plans under this chapter and
8 shall seek to recover overpayments and shall seek to collect underpayments.

9 **SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the general
10 fund in the state treasury, not otherwise appropriated, the sum of $250,000, or so much of the
11 sum as may be necessary, to the retirement and investment office for the purpose of
12 implementing this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.