

**Sixty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1219  
(Representatives Kempenich, Conmy, Kreidt)  
(Senator Schaible)

AN ACT to amend and reenact subsection 9 of section 15-39.1-04, subsection 7 of section 15-39.1-05.2, subsection 2 of section 15-39.1-12.2, sections 15-39.1-15 and 15-39.1-16, subsection 2 of section 15-39.1-18, and sections 15-39.1-19.1, 15-39.1-19.2, and 15-39.1-27 of the North Dakota Century Code, relating to the teachers' fund for retirement board authority and teachers' fund for retirement benefits.

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

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

9. "Retirement annuity" means the payments made by the fund to a member after retirement, ~~these payments beginning on the first or fifteenth day of the month following eligibility for a benefit.~~

**SECTION 2. AMENDMENT.** Subsection 7 of section 15-39.1-05.2 of the North Dakota Century Code is amended and reenacted as follows:

7. Shall, ~~through resolution,~~ inform the state investment board, which is the administrative board of the retirement and investment office, the levels of services, goals, and objectives expected to be provided through the retirement and investment office.

**SECTION 3. AMENDMENT.** Subsection 2 of section 15-39.1-12.2 of the North Dakota Century Code is amended and reenacted as follows:

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 the teacher, which is made pursuant to a North Dakota domestic relations law, and 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 the benefits payable to the teacher. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under the fund, or to provide increased benefits as determined on the basis of actuarial value. However, a qualified domestic relations order may require the payment of benefits at the early retirement date notwithstanding that the teacher has not terminated eligible employment. ~~A qualified domestic relations order must specify:~~
  - a. ~~The name and last known mailing address of the teacher and the name and mailing address of each alternate payee covered by the order;~~
  - b. ~~The amount or percentage of the teacher's benefits to be paid by the board 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.~~

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

**15-39.1-15. Withdrawal from fund - Return to teaching.**

A teacher who has withdrawn from the fund as set forth in this chapter, ~~by returning to teach in a public school or state institution of this state,~~ may, by returning to teach in a public school or state institution of this state, regain service credit for prior teaching by making the required payment. The required payment, ~~if made within five years of returning to teach in covered employment,~~ is the amount that was withdrawn with interest. In all other cases, the purchase cost must be on an actuarial equivalent basis. If the teacher returns to teach in covered employment after June 30, 2008, the teacher becomes a tier two member regardless of whether the teacher repurchases service credit earned while the teacher was a tier one member.

**SECTION 5. AMENDMENT.** Section 15-39.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-16. Option of teachers eligible to receive annuities.**

1. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

a. Option one. Upon the death of the teacher, the reduced retirement allowance must be continued throughout the life of, and paid to, the teacher's designated beneficiary named at the time of retirement. If the ~~person~~individual 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~~individual designated died ~~prior to~~before July 1, 1989, must begin on July 1, 1989, or, if the ~~person~~individual designated dies on or after July 1, 1989, must begin on the first day of the month following the death of the ~~person~~individual designated.

b. 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 teacher's designated beneficiary named at the time of retirement. If the ~~person~~individual 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~~individual designated died ~~prior to~~before 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~~individual designated.

c. Option three. Upon the death of the teacher within twenty years of the commencement of annuity payments, the payments must be continued for the remainder of the twenty-year period to the teacher's designated beneficiary. This payment option is available to teachers who retire after July 31, 2003.

d. 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 teacher's designated beneficiary.

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

~~Option six.~~ Partial lump sum distribution option. A member who is eligible for an unreduced service retirement annuity under section 15-39.1-10 and who retires after July 31, 2003, may make a one-time election to receive a portion of the retirement annuity paid in a lump sum distribution upon retirement, pursuant to rules adopted by the board.

4. (1) The eligible member may select a standard service retirement annuity or an optional service retirement annuity described in this ~~section~~subsection, together with a partial lump sum distribution. ~~The partial lump sum distribution option is not~~

~~available to members who have selected option five, the level income retirement option.~~ This option is not available to disabled members or beneficiaries of deceased members. The partial lump sum distribution option may be elected only once by a member and may not be elected by a retiree.

2. ~~(2)~~ The amount of the partial lump sum distribution under this ~~section~~subdivision is twelve months of a standard service retirement annuity computed under section 15-39.1-10 and payable at the same time ~~that~~ the first monthly payment of the annuity is paid.
  3. ~~(3)~~ The service retirement annuity selected by the member must be actuarially reduced to reflect the partial lump sum distribution option selected by the member.
  4. ~~(4)~~ Before a retiring member selects a partial lump sum distribution under this ~~section~~subdivision, the fund shall provide a written notice to the member of the amount by which the member's annuity will be reduced because of the selection.
2. 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 designated as beneficiary, ~~must~~shall 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~~member'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 6. AMENDMENT.** Subsection 2 of section 15-39.1-18 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of the disability annuity is the amount computed by the retirement formula in section 15-39.1-10 without consideration of age. A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16, ~~except the level retirement income with social security option or the partial lump sum option.~~

**SECTION 7. AMENDMENT.** Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.1. Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit.**

1. a. Except as otherwise provided in section 15-39.1-19.2, 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 thirty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the re-employed retiree's contract as follows:
  - (1) Retiree ~~reemployment~~re-employment of nine months or less, annual limit is seven hundred hours;
  - (2) Retiree ~~reemployment~~re-employment of ten months, annual limit is eight hundred hours;
  - (3) Retiree ~~reemployment~~re-employment of eleven months, annual limit is nine hundred hours; or

- (4) ~~Retiree reemployment~~re-employment of twelve months, annual limit is one thousand hours.
  - b. Employment as a noncontracted substitute teacher ~~does not apply to the annual hour limit. Professional, professional development, and extracurricular duties do not apply to the annual hour limit. The fund may not collect contributions for these activities.~~
  - c. The retired member and the retired member's employer must notify the fund office in writing within thirty days of the retired member's return to covered employment.
  - d. A retired member who returns to teaching shall pay the member contributions required by section 15-39.1-09 on the salary received by the retired member. The member contributions must be included in the retired member's account value and may not be refunded except as provided under subdivision a of subsection 2 of section 15-39.1-19.1 and section 15-39.1-17.
  - e. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member.
  - f. A retired teacher who returns to teaching and does not exceed the annual hour limit must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of re-employment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of re-employment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of re-employment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher re-employed under this section.
  - g. A retired teacher who returns to teaching and exceeds the annual hour limit must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit for the member. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.
2. Upon the retired teacher's subsequent retirement of a member who returns to teach and whose monthly benefit is discontinued, 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 contributions paid to the fund after the member's benefit was suspended 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 re-employment, the first day of the month following the teacher's re-retirement.~~
    - b. ~~If the teacher subsequently retires with two or more 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 re-employment plus any postretirement benefit adjustments granted during the period of re-employment, 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.~~
    - e. ~~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 re-employment plus any postretirement benefit adjustments granted during the period of re-employment, 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. The member must have selected the same benefit option as the option selected at initial retirement.~~

- b. The member's total benefit upon subsequent retirement must equal the original benefit plus the calculated benefit for the return to work period.
- c. The member's benefit attributable to any return to work must be based upon service and earnings attributable to the return to work period only and be calculated as follows:
  - (1) The member's calculated benefit must be based on the benefit provisions in effect at subsequent retirement and must include the salary earned during the period of re-employment, total service credits earned after re-employment, and actuarial factors in effect at subsequent retirement.
  - (2) If a member dies during subsequent employment, the member's initial retirement benefit option election applies and the date of death is considered the subsequent retirement date.

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

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

- 1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher ~~must~~:
  - a. ~~Return~~Shall return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board ~~by rule~~;
  - b. If retired after January 1, 2001, must have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties but may not engage in full-time or part-time teaching duties during the one-year separation from service; and
  - c. ~~Notify~~Shall notify the fund office in writing within thirty days of the retired member's return to covered employment. The retired member's employer ~~must~~ also shall notify the fund office in writing within thirty days of the retired member's return to covered employment.
- 2. A retired teacher who returns to teaching under this section shall pay the member contributions required by section 15-39.1-09 on the salary of the retired member. The member contributions must be included in the retired member's account value and may not be refunded except as provided under section 15-39.1-17. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of re-employment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of re-employment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of re-employment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher re-employed under this section.

3. A participating employer ~~whethat~~ employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member.

**SECTION 9. AMENDMENT.** Section 15-39.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-27. Computation of years of service.**

~~In computing the terms of service of a member under this chapter, for a member employed full time, a year is deemed to be one who receives compensation for at least seven hundred seventy-five days of compensation hours in a fiscal year earns one year of service. EmploymentA member who receives compensation for less than oneseven hundred seventy-five days of compensation is not deemed to be a full year but only as the proportion of a year as the number of hours of service earns fractional credit equal to the number of compensated hours employedworked in each a fiscal year of service bears divided by seven hundred hours. A member may not earn more than one year of service in a fiscal year.~~

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Speaker of the House

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President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1219.

House Vote:    Yeas 94            Nays 0            Absent 0

Senate Vote:    Yeas 47            Nays 0            Absent 0

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2023.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2023,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State