

(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, 15-39.1-19.1, 15-39.1-19.2, and 15-39.1-20 of the North
5 Dakota Century Code, relating to incorporation of Internal Revenue Code changes since the
6 last enactment of those provisions into state law, retired teachers returning to work, and
7 teachers' 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 15-39.1-19.1 of the North Dakota Century Code
8 as effective after July 31, 2005, is amended and reenacted as follows:

9 **15-39.1-19.1. (Effective after July 31, 2005) Annuities discontinued on resumption**
10 **of teaching.**

11 1. Except as otherwise provided in section 15-39.1-19.2, a retired ~~teacher~~ member
12 who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may
13 not return to covered employment until thirty calendar days have elapsed from the
14 member's retirement date. A retired member may then return to covered
15 employment under an annual hour limit and continue receiving a monthly
16 retirement benefit. The annual hour limit is based on the length of the reemployed
17 retiree's contract as follows:

- 18 a. Retiree reemployment of nine months or less, annual limit is seven hundred
19 hours;
20 b. Retiree reemployment of ten months, annual limit is eight hundred hours;
21 c. Retiree reemployment of eleven months, annual limit is nine hundred hours;
22 or
23 d. Retiree reemployment of twelve months, annual limit is one thousand hours.

24 Employment as a substitute teacher does not apply to the annual hour limit.
25 Professional development and extracurricular duties do not apply to the annual
26 hour limit.

27 ~~Should the retired member's employment exceed the annual hour limit, the A~~
28 retired member who returns to teach under this section and the retired member's
29 employer must immediately notify the fund office in writing on the required form.
30 Failure to notify the fund office ~~results~~ may result in the loss of one month's annuity

1 benefit. ~~The retired member's monthly benefit must be discontinued the first of the~~
2 ~~month following the date the member reaches the annual hour limit.~~

3 A retired member who returns to teaching shall pay the required contributions
4 ~~on those earnings~~ all salary received by the retired member ~~after reaching the~~
5 ~~annual hour limit~~ unless the employer has elected to pick up all or a portion of its
6 employees' contributions, in which case the employer and employee shall pay the
7 employee contribution based on the pickup methodology used by the employer.
8 The employer shall pay the required employer contributions in a like manner.

9 A retired member who returns to teaching under the annual hour limit is not
10 entitled to earn any additional service credit during the period of reemployment.
11 The retired member is not entitled to receive a refund of any additional
12 contributions paid and the retirement benefits may not be adjusted to reflect
13 changes in the retired member's age or final average monthly salary at the end of
14 the period of reemployment. The form of payment elected under section
15 15-39.1-16 remains effective during and after the period of reemployment and
16 additional benefits normally available to an active member, such as disability
17 benefits, are not available to a retired member reemployed under this section.

18 Should the retired member's employment exceed the annual hour limit, the
19 retired member's monthly benefit must be discontinued the first of the month
20 following the date the member reaches the annual hour limit.

21 2. Upon the retired ~~teacher's~~ member's subsequent retirement, the member's benefit
22 must be resumed as follows:

23 a. If the ~~teacher~~ member subsequently retires with less than two years of
24 additional earned credited service, the ~~teacher's~~ member's contributions paid
25 to the fund must be refunded in accordance with section 15-39.1-20 and the
26 ~~teacher~~ member is entitled to receive the discontinued annuity, plus any
27 postretirement benefit adjustments granted during the period of
28 reemployment, the first day of the month following the ~~teacher's~~ member's
29 re-retirement.

30 b. If the ~~teacher~~ member subsequently retires with two or more but less than five
31 years of additional earned credited service, the retired ~~person's~~ member's

1 annuity is the greater of the sum of the discontinued annuity, plus an
2 additional annuity computed according to this chapter based upon years of
3 service and average salaries earned during the period of reemployment plus
4 any postretirement benefit adjustments granted during the period of
5 reemployment, or a recalculated annuity computed according to this chapter
6 based on total years of service credit earned during both employment periods
7 offset by the actuarial value of payments already received. The new annuity
8 is payable the first day of the month following the member's re-retirement.

- 9 c. If the ~~teacher~~ member subsequently retires with five or more years of
10 additional earned credited service, the retired ~~person's~~ member's annuity is
11 the greater of the sum of the discontinued annuity plus an additional annuity
12 based upon years of service and average salaries earned during the period of
13 reemployment plus any postretirement benefit adjustments granted during the
14 period of reemployment, or a recalculated annuity based on all years of
15 service computed under subsection 2 of section 15-39.1-10. The new annuity
16 is payable the first day of the month following the member's re-retirement.

17 **SECTION 5. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code
18 is amended and reenacted as follows:

19 **15-39.1-19.2. (~~Effective through July 31, 2005~~) Retired ~~teachers~~ member's return**
20 **to active service - Critical shortage areas and disciplines - Rules.**

- 21 1. A retired ~~teacher~~ member who is receiving a retirement annuity under chapter
22 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any
23 benefits under the provisions of this section or elect to return to teaching under the
24 provisions of section 15-39.1-19.1. To return to teaching under this section, a
25 retired ~~teacher~~ member must:
- 26 a. Return to teach in a critical shortage geographical area or subject discipline
27 as determined by the education standards and practices board by rule; and
28 b. If retired after January 1, 2001, have been receiving a retirement annuity for at
29 least one year. A retired ~~teacher~~ member may perform noncontracted
30 substitute teaching duties but may not engage in full-time or part-time
31 teaching duties during the one-year separation from service.

1 2. A retired ~~teacher~~ member who returns to teaching under this section ~~is not~~
2 required to pay the employee assessment required by section 15-39.1-09 and the
3 retired member's employer must immediately notify the fund office in writing on the
4 required form. Failure to notify the fund office may result in the loss of one month's
5 annuity benefit. The retired member shall pay the required contributions on all
6 salary received by the retired member unless the employer has elected to pick up
7 all or a portion of its employees' contributions, in which case the employer and
8 employee shall pay the employee contribution based on the pickup methodology
9 used by the employer. The employer shall pay the required employer contributions
10 in a like manner. A retired ~~teacher~~ member who returns to teaching under the
11 provisions of this section must be treated as retired for all other purposes under
12 this chapter. A retired ~~teacher~~ member may not earn any additional service during
13 the period of reemployment. The retired ~~teacher's~~ member is not entitled to
14 receive a refund of any additional contributions paid and the retirement benefits
15 may not be adjusted to reflect changes in the retired ~~teacher's~~ member's age or
16 final average monthly salary at the end of the period of reemployment, any optional
17 form of payment elected under section 15-39.1-16 remains effective during and
18 after the period of reemployment, and additional benefits normally available to an
19 active member, such as disability benefits, are not available to a retired ~~teacher~~
20 member reemployed under this section.

21 **SECTION 6. AMENDMENT.** Section 15-39.1-20 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible
24 under the terms of this chapter to participate in the fund, the member may, after a period of one
25 hundred twenty days, withdraw from the fund and is then entitled to receive a refund of
26 assessments accumulated with interest. The one-hundred-twenty-day requirement may be
27 waived by the board when it has evidence the teacher will not be returning to teach in North
28 Dakota. The refund is in lieu of any other benefits to which the member may be entitled under
29 the terms of this chapter. The accumulated assessments of a member who ceases to be
30 eligible to participate in the fund before becoming vested must be automatically refunded. The
31 assessments plus interest earned, if not claimed by the member, must be returned in the fiscal

1 year following the date of termination. The automatic refund must be waived provided the
2 member presents the board with a statement of intent to return to teach in North Dakota within
3 thirty-six months after eligibility to participate in the fund ceases. The board may waive the
4 automatic refund for members who present to the board a statement of intent to return to teach
5 in North Dakota within a period exceeding thirty-six months after eligibility to participate in the
6 fund ceases. A member may elect, at the time and under rules adopted by the board, to have
7 any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible
8 retirement plan specified by the member as allowed under section 401(a)(31) of the Internal
9 Revenue Code in effect on August 1, ~~2003~~ 2005.

10 **SECTION 7.** A new section to chapter 15-39.1 of the North Dakota Century Code is
11 created and enacted as follows:

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