

Sixty-second  
Legislative Assembly  
of North Dakota

Introduced by

(At the request of the Teachers' Fund for Retirement)

1 A BILL for an Act to amend and reenact subsections 2 and 9 of section 15-39.1-04,  
2 subsection 4 of section 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-17, and 15-39.1-20 of  
3 the North Dakota Century Code, relating to definitions of beneficiary and salary, incorporation of  
4 federal law changes, and modification of death and beneficiary provisions under the teachers'  
5 fund for retirement.

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

7 **SECTION 1. AMENDMENT.** Subsections 2 and 9 of section 15-39.1-04 of the North  
8 Dakota Century Code are amended and reenacted as follows:

9 2. "Beneficiary" means ~~the~~ a person, estate, or organization designated in writing by  
10 ~~the member except that in the absence of such designation, if the member is~~  
11 ~~married, the member's spouse must be the primary beneficiary. If the member is~~  
12 ~~married, and if the member wishes to name an alternate beneficiary, the member's~~  
13 ~~spouse must consent in writing to the member's designation. If the member dies~~  
14 ~~without having named a contingent beneficiary to receive any remaining benefits~~  
15 ~~due after the death of the beneficiary, the primary beneficiary may name a~~  
16 ~~contingent beneficiary~~ a participating member to receive benefits provided by this  
17 plan, in receipt of benefits, or otherwise provided under section 15-39.1-17.

18 9. "Salary" means a member's earnings in eligible employment under this chapter for  
19 teaching, supervisory, administrative, and extracurricular services during a school  
20 year reported as salary on the member's federal income tax withholding  
21 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.  
22 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, ~~2009~~ 2011.

23 "Salary" ~~includes bonus~~ may include certain other amounts paid to members for  
24 ~~performance, retention, experience, and other service related bonuses, unless~~

1 ~~amounts are conditioned on or made in anticipation of an individual member's~~  
2 ~~retirement or termination~~ of duties, at the discretion of the board. The annual  
3 salary of each member taken into account in determining benefit accruals and  
4 contributions may not exceed the annual compensation limits established under  
5 26 U.S.C. 401(a)(17)(B) in effect on August 1, ~~2009~~ 2011, as adjusted for  
6 increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect  
7 on August 1, ~~2009~~ 2011. A salary maximum is not applicable to members whose  
8 participation began before July 1, 1996. "Salary" does not include:

- 9 a. Fringe benefits or side, nonwage, benefits that accompany or are in addition  
10 to a member's employment, including insurance programs, annuities,  
11 transportation allowances, housing allowances, meals, lodging, or expense  
12 allowances, or other benefits provided by a member's employer.
- 13 b. Insurance programs, including medical, dental, vision, disability, life, long-term  
14 care, workforce safety and insurance, or other insurance premiums or  
15 benefits.
- 16 c. Payments for unused sick leave, personal leave, vacation leave, or other  
17 unused leave.
- 18 d. Early retirement incentive pay, severance pay, or other payments conditioned  
19 on or made in anticipation of retirement or termination.
- 20 e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- 21 f. Amounts received by a member in lieu of previously employer-provided  
22 benefits or payments that are made on an individual selection basis.
- 23 g. ~~Recruitment~~ Signing bonuses as defined under section 15.1-09-33.1.
- 24 h. Other benefits or payments not defined in ~~subdivisions a through g~~ this  
25 section which the board determines to be ineligible teachers' fund for  
26 retirement salary.

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

- 29 4. Retirement benefits must begin no later than April first of the calendar year  
30 following the year the member attains age seventy and one-half or April first of the  
31 calendar year following the year the member terminates covered employment,

1           whichever is later. Payments must be made over a period of time which does not  
2           exceed the life expectancy of the member or the joint life expectancy of the  
3           member and the beneficiary. Payment of minimum distributions must be made in  
4           accordance with section 401(a)(9) of the Internal Revenue Code in effect on  
5           August 1, ~~2009~~ 2011, and the regulations issued under that section, as applicable  
6           to governmental plans.

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

9           **15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating  
10          under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum  
11          benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on  
12          August 1, ~~2009~~ 2011, for governmental plans. The maximum dollar benefit applicable under  
13          section 415(b)(1)(A) of the Internal Revenue Code must reflect any increases in this amount  
14          provided under section 415(d) of the Internal Revenue Code subsequent to August 1, ~~2009~~  
15          2011. If a member's benefit is limited by these provisions at the time of retirement or in any  
16          subsequent year, the benefit paid in any following calendar year may be increased to reflect all  
17          cumulative increases in the maximum dollar limit provided under section 415(d) of the Internal  
18          Revenue Code for years after the year payments commenced, but not to more than would have  
19          been payable in the absence of the limits under section 415 of the Internal Revenue Code. If  
20          an annuitant's benefit is increased by a plan amendment, after the commencement of  
21          payments, the member's benefit may not exceed the maximum dollar benefit under section  
22          415(b)(1)(A) of the Internal Revenue Code, adjusted for the commencement age and form of  
23          payment, increased as provided by section 415(d) of the Internal Revenue Code. If this plan  
24          must be aggregated with another plan to determine the effect of section 415 of the Internal  
25          Revenue Code on a member's benefit, and if the benefit must be reduced to comply with  
26          section 415 of the Internal Revenue Code, then the reduction must be made pro rata between  
27          the two plans, in proportion to the member's service in each plan.

28          **SECTION 4. AMENDMENT.** Section 15-39.1-17 of the North Dakota Century Code is  
29          amended and reenacted as follows:

30          **15-39.1-17. Death of member.**

- 1           1. ~~If the death of a member who has not acquired a vested interest should occur prior~~  
2           ~~to retirement, a refund of the member's assessments accumulated with interest~~  
3           ~~must be made to the member's beneficiary, or, if there is no beneficiary, the same~~  
4           ~~must be paid to the surviving children, or if none, to the member's estate; provided,~~  
5           ~~however, that if no probate proceedings have been instituted within thirty days of~~  
6           ~~the death of the member, then to the heirs at law who file claim with the fund within~~  
7           ~~one hundred fifty days of the death of the member.~~
- 8           2. ~~If the death of a member who has acquired a vested interest should occur prior to~~  
9           ~~retirement, then the member's beneficiary may apply for a refund of the member's~~  
10           ~~assessments accumulated with interest. If there is no beneficiary, then the same~~  
11           ~~must be paid to the surviving children, or if none, to the member's estate; provided,~~  
12           ~~however, that if no probate proceedings have been instituted within thirty days of~~  
13           ~~the death of the member, then to the heirs at law who file claim with the fund within~~  
14           ~~one hundred fifty days of the death of the member. In lieu of a refund, the~~  
15           ~~beneficiary may elect either to receive a monthly annuity in accordance with option~~  
16           ~~one under section 15-39.1-16, with the amount of the annuity being determined as~~  
17           ~~though the deceased member had retired under the option on the day benefits~~  
18           ~~commence to the beneficiary; or the beneficiary may elect to receive for sixty~~  
19           ~~months an amount equal to the monthly annuity the member would have received~~  
20           ~~if the member had attained age sixty five and retired, based on the member's~~  
21           ~~credited service to date of death. If any member under this section has not paid~~  
22           ~~into the fund assessments equal to the amounts required to be paid under section~~  
23           ~~15-39.1-09, the applicant shall pay any deficiency into the fund before receiving the~~  
24           ~~annuity.~~
- 25           3. ~~If a member who has received annuity payments other than a reduced retirement~~  
26           ~~allowance as provided in section 15-39.1-16 dies prior to receiving accumulated~~  
27           ~~annuity payments which exceed the assessments paid by the member to the fund~~  
28           ~~plus interest, or a member who has elected a reduced retirement allowance under~~  
29           ~~option one or two in section 15-39.1-16 dies and the person who was nominated to~~  
30           ~~receive that member's reduced allowance also dies prior to receiving, together,~~  
31           ~~accumulated annuity payments which exceed the assessments paid by the~~

1 ~~member to the fund plus interest, the member's beneficiary shall receive a final~~  
2 ~~payment equal to the assessments the member paid to the fund plus interest as~~  
3 ~~provided in section 15-39.1-20 less the amount of the annuity payments made. A~~  
4 ~~member may designate a beneficiary to receive death benefits under the plan if the~~  
5 ~~member dies. If the member is not married, the member may designate a person,~~  
6 ~~estate, or organization as primary beneficiary to receive death benefits. If the~~  
7 ~~member is married, the spouse of the member is the member's primary beneficiary~~  
8 ~~unless the spouse consents in writing to the member's alternate primary~~  
9 ~~beneficiary designation. A member also may designate contingent beneficiaries~~  
10 ~~who are entitled to any remaining death benefits if the primary beneficiary dies~~  
11 ~~before receiving all death benefits provided by this plan. If a member dies without~~  
12 ~~naming a contingent beneficiary, the primary beneficiary may name a contingent~~  
13 ~~beneficiary. If there is no named primary or contingent beneficiary, any death~~  
14 ~~benefits will be paid to the estate.~~

15 2. If a member has named more than one primary beneficiary, the board shall pay  
16 any death benefits to the primary beneficiaries in the percentages designated by  
17 the member or, if the member has not designated a percentage for the  
18 beneficiaries, in equal percentages. If one or more of the primary beneficiaries has  
19 predeceased the member, the board shall pay the predeceased beneficiary's share  
20 to the remaining primary beneficiaries. If no primary beneficiaries remain, any  
21 death benefits must be paid to the contingent beneficiaries in the same manner.

22 a. If before retiring a nonvested member dies, the plan shall pay the member's  
23 account value to the member's beneficiary.

24 b. If before retiring a vested member dies, the member's beneficiary may select  
25 a form of payment as follows:

26 (1) If the member dies and was eligible for unreduced retirement benefits  
27 and if the beneficiary is one person, the beneficiary may select:

28 (a) A lump sum payment of the member's account value; or

29 (b) A lifetime monthly annuity effective on the first of the month  
30 following the month of the member's death. The amount of the  
31 monthly annuity is equal to an amount that would have been paid

1                   to the beneficiary under a one hundred percent joint and survivor  
2                   annuity. If the beneficiary dies before receiving the guaranteed  
3                   member account value, any remaining balance must be paid in a  
4                   lump sum to a named contingent beneficiary, or if none, to the  
5                   estate of the recipient.

6                   (2) If the member dies and was not eligible for unreduced retirement  
7                   benefits and if the beneficiary is one person, the beneficiary may select:

8                   (a) A lump sum payment of the member's account value; or

9                   (b) A lifetime monthly annuity effective on the first of the month  
10                   following the month of the member's death. The amount of the  
11                   monthly annuity is equal to an amount that would have been paid  
12                   to the beneficiary under a one hundred percent joint and survivor  
13                   annuity without reduction for early retirement and using the  
14                   disability option reduction factor. If the beneficiary dies before  
15                   receiving the guaranteed member account value, any remaining  
16                   balance must be paid in a lump sum to a named contingent  
17                   beneficiary, or if none, to the estate of the recipient.

18                   (3) If the member dies and multiple beneficiaries are eligible for death  
19                   benefits, the plan shall pay the member's account value to the  
20                   member's beneficiaries.

21                   c. If a member or beneficiary receiving benefits under this plan dies before the  
22                   total amount of benefits paid to either or both equals the amount of the  
23                   member's account value, the difference must be paid in a lump sum to a  
24                   named beneficiary, or if none, to the estate of the recipient.

25                   **SECTION 5. 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

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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. A  
5 member or a beneficiary of a member may elect, at the time and under rules adopted by the  
6 board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to  
7 an eligible retirement plan specified by the member ~~as allowed under~~ or the beneficiary to the  
8 extent permitted by section 401(a)(31) of the Internal Revenue Code in effect on August 1,  
9 ~~2009~~ 2011.