

Sixty-second  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1398**

Introduced by

Representatives Schatz, Boehning

Senator Cook

1 A BILL for an Act to create and enact two new subsections to section 15-39.1-04 of the North  
2 Dakota Century Code, relating to definitions under the teachers' fund for retirement; to amend  
3 and reenact subsection 2 of section 15-39.1-10 and subsection 1 of section 15-39.1-10.3 of the  
4 North Dakota Century Code, relating to calculation of final average salary under the teachers'  
5 fund for retirement; and to provide for application.

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

7 **SECTION 1.** Two new subsections to section 15-39.1-04 of the North Dakota Century Code  
8 are created and enacted as follows:

9       "Administrator" means an individual who holds an administrator's credential and who  
10      is employed by the board of a school district for the primary purpose of providing  
11      administrative services to the schools of the district. The term includes a school district  
12      superintendent, an assistant or associate school district superintendent, a school  
13      principal, an assistant or associate school principal, a special education director, a  
14      director of a multidistrict special education unit, a career and technical education  
15      director, and a director of an area career and technology center. The term may include  
16      an athletic or activity director who meets the requirements of this subsection.

17       "Profession of teaching" means providing services in an approved school as a teacher,  
18      counselor, librarian, curriculum director or supervisor, speech or language therapist,  
19      school psychologist, or special educator.

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

22       2. The amount of retirement benefits is two percent of the final average monthly salary of  
23 the member multiplied by the number of years of credited service. For the Except as

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1       otherwise provided in this subsection, for purposes of this subsection, final average  
2       monthly salary for a tier one member means one thirty-sixth of the total of the  
3       member's highest annual salaries earned between July first of a calendar year and  
4       June thirtieth of the subsequent calendar year for any three years of service credit  
5       under the fund. For~~However, a tier one member employed in the profession of~~  
6       teaching who subsequently is employed as an administrator must complete eight  
7       years of service as an administrator before that member may use any service as an  
8       administrator in calculating final average salary under this subsection. A member who  
9       began service in the profession of teaching, later became employed as an  
10      administrator, and does not complete eight years of service as an administrator must  
11      use one thirty-sixth of the total of the member's highest annual salaries earned  
12      between July first of a calendar year and June thirtieth of the subsequent calendar  
13      year for any three years employed in the profession of teaching in the computation of  
14      final average salary. If the member has worked for fewer than three years employed in  
15      the profession of teaching before beginning service as an administrator and does not  
16      complete eight years of service as an administrator, the final average salary is the  
17      average salary for all months of employment in the profession of teaching. Except as  
18      otherwise provided in this subsection, for purposes of this subsection, final average  
19      monthly salary for a tier two member means one sixtieth of the total of the member's  
20      highest annual salaries earned between July first of a calendar year and June thirtieth  
21      of the subsequent calendar year for any five years of service credit under the fund.  
22      However, a tier two member employed in the profession of teaching who subsequently  
23      is employed as an administrator must complete eight years of service as an  
24      administrator before that member may use any service as an administrator in  
25      calculating final average salary under this subsection. A member who began service in  
26      the profession of teaching, later became employed as an administrator, and does not  
27      complete eight years of service as an administrator must use one sixtieth of the total of  
28      the member's highest annual salaries earned between July first of a calendar year and  
29      June thirtieth of the subsequent calendar year for any five years employed in the  
30      profession of teaching in the computation of final average salary. If the member has  
31      worked for fewer than five years employed in the profession of teaching before

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beginning service as an administrator and does not complete eight years of service as an administrator, the final average salary is the average salary for all months of employment in the profession of teaching. For purposes of calculating final average salary under this subsection for a member who has a break in service by teaching outside this state, that member may use service teaching outside this state in the calculation of final average salary.

**SECTION 3. AMENDMENT.** Subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

1. a. For the purpose of determining vesting of rights and eligibility for benefits under this chapter, a teacher's years of service credit is the total of the years of service credit earned in the fund and the years, with twelve months of compensation equal to a year, of service employment earned in any number of the following alternate plans:

- (1) The public employees retirement system.
- (2) The highway patrolmen's retirement system.

Service credit may not exceed one year of service in any fiscal year in determining vesting and benefit eligibility.

b. If a teacher terminates eligible employment under the fund, if that teacher has not received a refund of member contributions, and if that teacher begins eligible employment in a plan described in paragraph 1 or 2 of subdivision a, that teacher may elect to remain an inactive member of the fund without refund of contributions. The board shall terminate the inactive status of a teacher under this subdivision if the teacher gains eligible employment under this chapter or if the teacher terminates eligible employment under a plan described in paragraph 1 or 2 of subdivision a.

c. Pursuant to rules adopted by the board, a teacher who has service credit in the fund and in any number of the alternate plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter.

- (1) ASubject to paragraph 3, a tier one member may elect to have benefits calculated using the benefit formula in subsection 2 of section 15-39.1-10 under either of the following calculation methods:

- (a) Using the three highest certified fiscal year salaries of this plan in the computation of final average salary and all service credit earned in this plan; or
  - (b) Using the three highest certified fiscal year salaries of this plan combined with the alternate plan in the computation of final average salary and service credit not to exceed one year in any fiscal year when combined with the service credit earned in the alternate retirement plan.

(2) A Subject to paragraph 3, a tier two member may elect to have benefits calculated using the benefit formula in subsection 2 of section 15-39.1-10 under either of the following calculation methods:

  - (a) Using the five highest certified fiscal year salaries of this plan in the computation of final average salary and all service credit earned in this plan; or
  - (b) Using the five highest certified fiscal year salaries of this plan combined with the alternate plan in the computation of final average salary and service credit not to exceed one year in any fiscal year when combined with the service credit earned in the alternate retirement plan.

(3) For purposes of calculation of final average salary under this subsection, a tier one member employed in the profession of teaching who subsequently is employed as an administrator must complete eight years of service as an administrator before that member may use any service as an administrator in calculating final average salary under this subsection. A tier one member who began service in the profession of teaching, later became employed as an administrator, and does not complete eight years of service as an administrator must use the three highest certified fiscal year salaries of this plan employed in the profession of teaching in the computation of final average salary. If the member has worked for fewer than three years employed in the profession of teaching before beginning service as an administrator and does not complete eight years of service as an administrator

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1           administrator, the final average salary is the average salary for all months of  
2           employment in the profession of teaching. A tier two member employed in  
3           the profession of teaching who subsequently is employed as an  
4           administrator must complete eight years of service as an administrator  
5           before that member may use any service as an administrator in calculating  
6           final average salary under this subsection. A tier two member who began  
7           service in the profession of teaching, later became employed as an  
8           administrator, and does not complete eight years of service as an  
9           administrator must use the five highest certified fiscal year salaries of this  
10          plan employed in the profession of teaching in the computation of final  
11          average salary. If the member has worked for fewer than five years  
12          employed in the profession of teaching before beginning service as an  
13          administrator and does not complete eight years of service as an  
14          administrator, the final average salary is the average salary for all months  
15          employed in the profession of teaching. For purposes of calculating final  
16          average salary under this subsection for a member who has a break in  
17          service by teaching outside this state, that member may use service  
18          teaching outside this state in the calculation of final average salary.

19          **SECTION 4. APPLICATION.** This Act applies to salaries earned after June 30, 2011.