

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-89
HOUSE BILL 203**

AN ACT MAKING TECHNICAL CORRECTIONS AND OTHER CONFORMING AND CLARIFYING CHANGES TO THE LAWS GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND TO OTHER RELATED STATUTES, AS RECOMMENDED BY THE DEPARTMENT OF STATE TREASURER.

The General Assembly of North Carolina enacts:

PART I. CHANGES TO THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

SECTION 1.1. G.S. 135-3(8)f. reads as rewritten:

- "f. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed by, or otherwise engaged to perform services for, an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee for service basis, whether contractual or otherwise at any time during the six months immediately following the effective date of retirement, then the option of the two listed below that has the lesser financial impact on the member, as determined by the Retirement System, shall be applied:
1. The member's retirement shall be deemed effective the month after the last month the member performed services for a participating employer, and the member shall repay all retirement benefits paid up to the deemed effective date, provided the member thereafter has satisfied the six-month separation required by G.S. 135-1(20).
 2. The member shall make a lump-sum payment to the Retirement System equal to three times the amount of compensation earned during the six months immediately following the effective date of retirement. If the member is unable to make a lump-sum payment, the member can elect to have the entirety of their monthly retirement benefit withheld until the Retirement System has recovered three times the amount of compensation earned during the six months immediately following the effective date of retirement."

SECTION 1.2. G.S. 135-4 reads as rewritten:

"§ 135-4. Creditable service.

...
(h) During periods when a member is on an approved leave of absence and is receiving less than the member's full compensation, the member will be deemed to be in service only if the member is contributing to the Retirement System as provided in G.S. 135-8(b)(5). If the member is so contributing, the annual rate of compensation paid to such employee immediately before



the approved leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence.

...

(ff) **Retroactive Membership Service.** – A member who is reinstated to service as an employee as defined in G.S. 135-1(10) or as a teacher as defined in G.S. 135-1(25) retroactively to the date of prior involuntary termination with back pay, as defined by the State Human Resources Commission, and associated benefits may be allowed membership service, after submitting clear and convincing evidence of the reinstatement, payment of back pay, and restoration of associated benefits, as follows:

- (1) When the reinstatement to service is by court order, final decision of an Administrative Law Judge, or with the approval of the Office of State Human Resources Director, and is:
 - a. Within 90 days of the involuntary termination, by the payment of employee and employer contributions that would have been paid; or
 - b. After 90 days of the involuntary termination, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.
- (2) When the reinstatement to service is by settlement agreement voluntarily entered into by the affected parties, by the payment of a lump-sum ~~amount.~~ ~~The amount,~~ the member shall purchase this service by paying a lump sum amount to the annuity savings fund equal to the full liability increase due to the additional service credits on the basis of the assumptions used for the purposes of the actuarial valuation of the liabilities of the Retirement System, except for the following assumptions specific to this calculation: (i) the allowance shall be assumed to commence at the earliest age at which the member could retire on an unreduced retirement allowance and (ii) assumed annual postretirement allowance increases as set by the Board of Trustees upon the advice of the consulting actuary. The calculation of the amount payable shall also include an administrative fee to be set by the Board.

...."

SECTION 1.3. G.S. 135-5(l) reads as rewritten:

"(l) **Death Benefit Plan.** – There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Plan shall be part of the North Carolina Teachers' and State Employees' Benefit Trust, as established under G.S. 135-7(g). All receipts, transfers, appropriations, contributions, investment earnings, and other income belonging to the Plan shall be deposited in the Benefit Trust. All benefits and expenses against the Plan shall be disbursed from the Benefit Trust. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to participants, surviving spouses, and the members' estates in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

...

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. ~~When employment~~ When the employee has been terminated, the last day the member actually worked.
 - b. ~~When employment~~ When the employee has not been terminated, the date on which an absent member's sick and annual leave expire, unless ~~he~~ the member is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).
 - c. ~~When a participant's employment~~ When the member's service is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.

...."

SECTION 1.4. G.S. 135-8(b)(5) reads as rewritten:

"(b) Annuity Savings Fund. – The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to any payments from the annuity savings fund shall be made as follows:

...

- (5) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer only for the purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer, subject to the provisions of this subdivision. A leave of absence or interrupted service may be approved for purchase under this subdivision for a period of employment as a teacher in a charter school. Any other leave of absence or interrupted service shall qualify for purchase under this subdivision only if (i) during the time of the leave or interrupted service the member is enrolled and participates in a full time degree program at an accredited institution of higher education, (ii) the member is not paid compensation, other than a stipend resulting from participation in a full-time degree program, for the activity in which he or she is acquiring knowledge, talents, or abilities, and (iii) the service is not purchased for any month in which the member performed any services for any

of the organizations listed in ~~G.S. 135-27(a) or G.S. 135-27(f)~~, G.S. 135-27(a) or G.S. 135-27(f), or a successor to any of those organizations. Approval by the Board under this subdivision shall be made prior to the purchase of the creditable service, is limited to a career total of six years for each member, and may be obtained in the following manner:
...."

PART II. CHANGES PERTAINING TO THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM

SECTION 2.1. G.S. 128-26(v)(2) reads as rewritten:

"(2) When the reinstatement to service is by settlement agreement voluntarily entered into by the affected parties, by the payment of a lump-sum ~~amount~~. ~~The amount~~, the member shall purchase this service by paying a lump sum amount to the annuity savings fund equal to the full liability increase due to the additional service credits on the basis of the assumptions used for the purposes of the actuarial valuation of the liabilities of the Retirement System, except for the following assumptions specific to this calculation: (i) the allowance shall be assumed to commence at the earliest age at which the member could retire on an unreduced retirement allowance and (ii) assumed annual postretirement allowance increases as set by the Board of Trustees upon the advice of the consulting actuary. The calculation of the amount payable shall also include an administrative fee to be set by the Board."

SECTION 2.2. G.S. 128-26(y)(3) reads as rewritten:

"(3) Option three. – An adjustment to the required employer contribution rate for the employer as provided in ~~G.S. 128-30(d)(4b)~~. G.S. 128-30(d)(4a)."

SECTION 2.3. G.S. 128-27(e)(6) reads as rewritten:

"(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability ~~or to~~ or the ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above."

SECTION 2.4. G.S. 128-26(g) reads as rewritten:

"(g) During periods when a member is on an approved leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 128-30(b)(4). If he is so contributing, the annual rate of compensation paid to such employee immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence."

SECTION 2.5. G.S. 128-27(l) reads as rewritten:

"(l) Death Benefit Plan. – The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System. There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is

separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Plan shall be part of the North Carolina Teachers' and State Employees' Benefit Trust, as established under G.S. 135-7(g). All receipts, transfers, appropriations, contributions, investment earnings, and other income belonging to the Plan shall be deposited in the Benefit Trust. All benefits and expenses against the Plan shall be disbursed from the Benefit Trust. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to members and beneficiaries in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

...

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. ~~When employment~~ When the employee has been terminated, the last day the member actually worked.
 - b. ~~When employment~~ When the employee has not been terminated, the date on which an absent member's sick and annual leave expire.
 - c. ~~When a participant's employment~~ When the member's service is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.

...."

SECTION 2.6. G.S. 128-30(b2) reads as rewritten:

"(b2) Retroactive Adjustment in Compensation or an Underreporting of Compensation. – A member or beneficiary who is awarded backpay in cases of a denied promotional opportunity or wrongful demotion in which the aggrieved member or beneficiary is granted a promotion or a demotion is reversed retroactively, or in cases in which an employer errs in the reporting of compensation, including the employee and employer contributions, the member or beneficiary and employer may make employee and employer contributions on the retroactive or additional compensation after submitting clear and convincing evidence of the retroactive promotion or underreporting of compensation, as follows:

...

In the event the retroactive adjustment in compensation or the underreported compensation is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to ~~G.S. 135-1(5)~~, G.S. 128-21(5), the compensation the member or beneficiary would have received during the period shall be included in calculating the member's or beneficiary's average final compensation only in the event the appropriate employee and employer contributions are paid on such compensation.

An employer error in underreporting compensation shall not include a retroactive increase in compensation that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to ~~G.S. 135-1(5)~~, ~~G.S. 128-21(5)~~, for reasons other than a wrongfully denied promotional opportunity or wrongful demotion where the member is promoted or the demotion is reversed retroactively."

PART III. CHANGES PERTAINING TO THE DISABILITY INCOME PLAN OF NORTH CAROLINA

SECTION 3.1. G.S. 135-102(a) reads as rewritten:

"(a) The provisions of this Article shall be administered by the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement ~~System~~ ~~System, except where otherwise provided~~, and all expenses in connection with the administration of the Plan, except for expenses incurred by and properly charged to the employer, shall be charged against and paid from the trust fund as created and provided in this Article."

SECTION 3.2. G.S. 135-105(a)(4) reads as rewritten:

"(4) The participant's employer and ~~attending~~ physician certify that the participant is mentally or physically incapacitated for the further performance of duty."

PART IV. CHANGES PERTAINING TO THE APPLICATION OF NET PROCEEDS FOR STATE LANDS

SECTION 4. G.S. 146-30 reads as rewritten:

"§ 146-30. Application of net proceeds.

(a) The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority:

- (1) First, in accordance with the provisions of any trust or other instrument of title whereby title to real property was acquired.
- (2) Second, as provided by any other act of the General Assembly.
- (3) Third, by depositing the net proceeds ~~with the State Treasurer~~ in accordance with Article 6A of Chapter 147 of the General Statutes.

Nothing in this section, however, prohibits the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty-five thousand dollars (\$25,000), then the exchange shall not be made without consultation with the Joint Legislative Commission on Governmental Operations.

...

(d) Notwithstanding any other provision of this Subchapter, the following exceptions apply:

...

(6) The following provisions apply with respect to land owned by or under the supervision and control of the Department of Agriculture and Consumer Services:

- a. The net proceeds derived from the sale of land shall be deposited ~~with the State Treasurer~~ in a capital improvement account to the credit of the Department of Agriculture and Consumer Services, to be used for such specific capital improvement projects or other purposes as are provided by transfer of funds from those accounts in an act of the General Assembly.
- b. The net proceeds derived from the sale of timber and other products of land shall be deposited in ~~accounts at the~~ accounts to the credit of the Department of Agriculture and Consumer Services to be used for operational expenses of the Department incurred for restoration and stewardship of the land.

- c. Except as otherwise specifically provided by law, the Department of Agriculture and Consumer Services is subject to Article 6A of Chapter 147 of the General Statutes with respect to net proceeds required to be deposited as provided in this subdivision.
- (7) The net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Natural and Cultural Resources shall be deposited ~~with the State Treasurer~~ in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. In the Capital Improvement Appropriations Act, line items for purchase of park and agricultural lands will be established for use by the Departments of Administration and Agriculture. The use of these funds for any specific capital improvement project or land acquisition is subject to approval by the Director of the Budget. No other use shall be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally, with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be demonstrated and funds in the capital improvement accounts are insufficient. Except as otherwise specifically provided by law, the Department of Administration is subject to Article 6A of Chapter 147 of the General Statutes with respect to net proceeds required to be deposited as provided in this subdivision.
- (8) The net proceeds derived from the sale of any portion of the land owned by the State in the Camp Butner reservation shall be deposited ~~with the State Treasurer~~ in a capital improvement account to the credit of the Department of Health and Human Services to make capital improvements on or to property owned by the State in the Camp Butner reservation subject to approval by the Office of State Budget and Management. The net proceeds derived from the sale of timber from land owned by the State in the Camp Butner reservation shall be deposited ~~with the State Treasurer~~ in a capital improvement account to the credit of the Department of Public Safety to be used to support the North Carolina National Guard's Camp Butner Training Center and other North Carolina National Guard-operated Training Centers. The definition of "Camp Butner reservation" in G.S. 122C-3 applies to this subdivision. Except as otherwise specifically provided by law, the following provisions apply with respect to net proceeds required to be deposited as provided in this subdivision:
- a. The Department of Health and Human Services is subject to Article 6A of Chapter 147 of the General Statutes with respect to net proceeds that must be deposited to the credit of the Department of Health and Human Services.
- b. The Department of Public Safety is subject to Article 6A of Chapter 147 of the General Statutes with respect to net proceeds that must be deposited to the credit of the Department of Public Safety.
-"

PART V. REPEAL OF OBSOLETE STATUTES

SECTION 5. The following statutes are repealed:

- (1) G.S. 143A-27.

- (2) G.S. 143A-27.1.
- (3) G.S. 143A-29.

PART VI. EFFECTIVE DATE

SECTION 6. This act becomes effective January 1, 2024.

In the General Assembly read three times and ratified this the 29th day of June, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:26 p.m. this 10th day of July, 2023