

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

§ 128-1. No person shall hold more than one office; exception.

No person who shall hold any office or place of trust or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly except as provided in G.S. 128-1.1, or by other General Statute. (Const., art. 14, s. 7; Rev., s. 2364; C.S., s. 3200; 1967, c. 24, s. 24; 1969, c. 1070; 1971, c. 697, s. 1; 1983, c. 609, s. 9.)

§ 128-1.1. Dual-office holding allowed.

(a) Any person who holds an appointive office, place of trust or profit in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit, or an elective office in either State or local government.

(b) Any person who holds an elective office in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution to hold concurrently one other appointive office, place of trust or profit, in either State or local government.

(c) Any person who holds an office or position in the federal postal system or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs is hereby authorized to hold concurrently therewith one position in State or local government.

(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency required to perform the described functions.

(c2) Repealed by Session Laws 2015-201, s. 3(b), effective August 5, 2015.

(d) The term "elective office," as used herein, shall mean any office filled by election by the people when the election is conducted by a county board of elections under the supervision of the State Board of Elections. (1971, c. 697, s. 2; 1975, c. 174; 1987, c. 427, s. 10; 2006-259, s. 24(a); 2011-31, s. 13; 2014-100, s. 14.11(b); 2015-201, s. 3(b); 2015-241, s. 14.30(u); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 128-1.2. Ex officio service by county and city representatives and officials.

Except when the resolution of appointment provides otherwise, whenever the governing body of a county or city appoints one of its own members or officials to another board or commission, the individual so appointed is considered to be serving on the other board or commission as a part of the individual's duties of office and shall not be considered to be serving in a separate office.

As used in this section, the term "official" means (i) in the case of a county, the county manager, acting county manager, interim county manager, county attorney, finance officer, or clerk to the board and (ii) in the case of a city, the city manager, acting city manager, interim city manager, city attorney, finance officer, city clerk, or deputy clerk. As used in this section, the term "city" has the meaning provided in G.S. 160A-1. (1983, c. 651, s. 1; 1991, c. 508, s. 5.)

§ 128-2. Holding office contrary to the Constitution; penalty.

If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the General Assembly, contrary to Article VI, Sec. 9 of the North Carolina Constitution, he shall forfeit all rights and emoluments incident thereto. (1790, c. 319, P.R.; 1792, c. 366, P.R.; 1793, c. 393, P.R.; 1796, c. 450, P.R.; 1811, c. 811, P.R.; R.C., c. 77, s. 1; Code, s. 1870; Rev., s. 2365; C.S., s. 3201; Ex. Sess., 1924, c. 110; 1971, c. 697, s. 3.)

§ 128-3. Bargains for office void.

All bargains, bonds and assurances made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void. (5 and 6 Edw. VI, c. 16, s. 3; R.C., c. 77, s. 2; Code, s. 1871; Rev., s. 2366; C.S., s. 3202.)

§ 128-4. Receiving compensation of subordinates for appointment or retention; removal.

Any official or employee of this State or any political subdivision thereof, in whose office or under whose supervision are employed one or more subordinate officials or employees who shall, directly or indirectly, receive or demand, for himself or another, any part of the compensation of any such subordinate, as the price of appointment or retention of such subordinate, shall be guilty of a Class 1 misdemeanor: Provided, that this section shall not apply in cases in which an official or employee is given an allowance for the conduct of his office from which he is to compensate himself and his subordinates in such manner as he sees fit. Any person convicted of violating this section, in addition to the criminal penalties, shall be subject to removal from office. The procedure for removal shall be the same as that provided for removal of certain local officials from office by G.S. 128-16 to 128-20, inclusive. (1937, c. 32, ss. 1, 2; 1993, c. 539, s. 942; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 128-5. Oath required before acting; penalty.

Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars (\$500.00) to the use of the poor of the county in or for which the office is to be used, and of being ejected from his office or place by proper proceedings for that purpose. (R.C., c. 77, s. 4; Code, s. 1873; Rev., s. 2367; C.S., s. 3203.)

§ 128-6. Persons admitted to office deemed to hold lawfully.

Any person who shall, by the proper authority, be admitted and sworn into any office, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law, declared void. (Const., art. 4, s. 25; 1844, c. 38, s. 2; 1848, c. 64, s. 1; R.C., c. 77, s. 3; Code, s. 1872; Rev., s. 2368; C.S., s. 3204.)

§ 128-7. Officer to hold until successor qualified.

All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified. (1848, c. 64, s. 2; R.C., c. 77, s. 3; Code, s. 1872; Rev., s. 2368; C.S., s. 3205.)

§ 128-7.1. Failure to qualify creates vacancy.

If any person who has been elected to public office (i) dies or becomes disqualified for the office before qualifying for the office, or (ii) for any reason refuses to qualify for the office, the office shall be declared vacant. Unless otherwise provided by law, such vacancy shall be filled by appointment by the authority having the power to fill vacancies as prescribed by law. (1971, c. 183.)

§ 128-7.2. Qualifications for appointment to fill vacancy in elective office.

No person is eligible for appointment to fill a vacancy in any elective office, whether State or local, unless that person would have been qualified to vote as an elector for that office if an election were to be held on the date of appointment. This section is intended to implement the provisions of Section 8 of Article VI of the Constitution. (2007-391, s. 27(a).)

§ 128-8: Repealed by Session Laws 1981, c. 884, s. 13.

§ 128-9: Repealed by Session Laws 1979, c. 650.

§ 128-10. Citizen to recover funds of county or town retained by delinquent official.

When an official of a county, city or town is liable upon his bond for unlawfully and wrongfully retaining by virtue of his office a fund, or a part thereof, to which the county, city or town is entitled, any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from the delinquent official the fund so retained. Any county commissioners, aldermen, councilmen or governing board who fraudulently, wrongfully and unlawfully permit an official so to retain funds shall be personally liable therefor; any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from such county commissioners, aldermen, councilmen, or governing board, the fund so retained. Before instituting suit under this section, the citizen and taxpayer shall file a statement before the county commissioners, treasurer, or other officers authorized by law to institute the suit, setting forth the fund alleged to be retained or permitted to be retained, and demanding that suit be instituted by the authorities authorized to sue within 60 days. The citizen and taxpayer so suing shall receive one-third part, up to the sum of five hundred dollars (\$500.00), of the amount recovered, to indemnify him for his services, but the amount received by the taxpayer and citizen as indemnity shall in no case exceed five hundred dollars (\$500.00). (1913, c. 80; C.S., s. 3206.)

§ 128-11. Trust funds to be kept separate.

Any sheriff, treasurer or other officer of any county, city, town or other political subdivision of the State, receiving, by virtue of his office, public money or money to be held by him in trust shall keep or deposit such money or the credits or other evidence thereof separate and apart from his own funds and shall not, at any time, apply such money to his own use or benefit or intermingle the same in any manner with credits or funds of his own. (1931, c. 77, s. 1.)

§ 128-12. Violations to be reported; misdemeanors.

It shall be the duty of the director of the Local Government Commission to report to the district attorney of the district any violation of G.S. 128-11 of which he may have knowledge, and any violation of such section shall be unlawful and shall constitute a Class 1 misdemeanor. (1931, c. 60, s. 3; 1931, c. 77, s. 2; 1973, c. 47, s. 2; 1993, c. 539, s. 943; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 128-13. Officers compensated from fees in certain counties to render statement; penalty; proceeds to school fund.

Every clerk of the superior court, register of deeds, sheriff, coroner, surveyor, or other county officer, whose compensation or services performed shall be derived from fees, shall render to the board of county commissioners of their respective counties, on the first Monday in December of each year, a statement, verified under oath, showing: first, the total gross amount of all fees collected during the preceding fiscal year; second, the total amount paid out during the preceding fiscal year for clerical or office assistance. Any county officer, subject to this section, who refuses or fails to file such report as above provided, on or before the first Monday in December, shall be subject to a fine of twenty-five dollars (\$25.00) and ten dollars (\$10.00) additional for each day or fraction of a day such failure shall continue. The board of county commissioners shall assess and collect the penalty above provided for, and supply same to the general school fund of the county. The first report under this section shall be for the fiscal year beginning December 12, 1913.

This section applies only to the Counties of Anson, Bertie, Bladen, Cabarrus, Carteret, Chowan, Currituck, Duplin, Halifax, Harnett, Haywood, Hertford, Johnston, Jones, Moore, Pender, Perquimans, Pitt, Randolph, Richmond, Rowan, Scotland, Union, Vance, Warren, Washington, Wayne, Wilson. (1913, c. 97; Ex. Sess., 1913, c. 10; 1935, c. 390.)

§ 128-14. Identification cards for field agents or deputies of State departments.

Every field agent or deputy of the various State departments who is authorized to collect money, audit books, inspect premises of individual or business firms and/or any other field work pertaining to the department which he represents, shall be furnished with an identification card signed by the head of the department represented by him, certifying that the said field agent or deputy has authority to represent the department, and such identification card shall carry a photographic likeness of said representative. (1937, c. 236.)

§ 128-15. Employment preference for veterans and their spouses or surviving spouses.

(a) It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment with every State department, agency, and institution.

(b) As used in this section:

- (1) "A period of war" includes World War I (April 16, 1917, through November 11, 1918), World War II (December 7, 1941, through December 31, 1946), the Korean Conflict (June 27, 1950, through January 31, 1955), the period of time between January 31, 1955, and the end of the hostilities in Vietnam (May 7, 1975), or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

- (2) "Veteran" means a person who served in the Armed Forces of the United States on active duty, for reasons other than training, and has been discharged under other than dishonorable conditions.
- (3) "Eligible veteran" means:
 - a. A veteran who served during a period of war; or
 - b. The spouse of a disabled veteran; or
 - c. The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as the result of such service; or
 - d. A veteran who suffered a disabling injury for service-related reasons during peacetime; or
 - e. The spouse of a veteran described in subdivision d. of this subsection; or
 - f. The surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who dies for service-related reasons during peacetime.

(c) Hereafter, in all evaluations of applicants for positions with this State or any of its departments, institutions or agencies, a preference shall be awarded to all eligible veterans who are citizens of the State and who served the State or the United States honorably in the military forces of this State or of the United States during a period of war. This preference applies to initial employment with the State and extends to other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers.

(d) The provisions of this section shall be subject to the provisions of Article 1 of Chapter 165 of the General Statutes, and Parts 13 and 19 of Article 9 of Chapter 143B of the General Statutes. (1939, c. 8; 1953, c. 1332; 1967, c. 536; 1987 (Reg. Sess., 1988), c. 1064, s. 2; 2007-286, s. 1; 2011-183, s. 96.)

§ 128-15.1: Repealed by 1987 (Reg. Sess., 1988), c. 1064, s. 4.

§ 128-15.2. Appointment of acting heads of certain agencies.

In every case where a State board or commission is authorized by statute to appoint the executive head of a State agency or institution, that board or commission may appoint an acting executive head of that agency or institution to serve

- (1) During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,
- (2) During the continued absence of the regular holder of the office, or
- (3) During a vacancy in the office and pending the selection and qualification of a person to serve for the unexpired term.

An acting executive head of a State agency or institution appointed in accordance with this section may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately

- (1) Upon the termination of the incapacity of the officer in whose stead he acts,
- (2) Upon the return of the officer in whose stead he acts, or
- (3) Upon the selection and qualification of a person to serve for the unexpired term.

Each State board or commission may determine (after such inquiry as it deems appropriate) that the executive head of a State agency or institution whom it is authorized by statute to appoint is physically or mentally incapable of performing the duties of his office. Each such board or commission may also determine that such incapacity has terminated. (1959, c. 284, s. 1.)

§ 128-15.3. Discrimination against handicapped prohibited in hiring; recruitment, etc., of handicapped persons.

There shall be no discrimination in the hiring policies of the State Human Resources system against any applicant for employment based upon any physical defect or impairment of the applicant unless the defect or impairment to some degree prevents the applicant from performing the duties required by the employment sought.

It shall be the policy of this State to give positive emphasis to the recruitment, evaluation, and employment of physically handicapped persons in State government. To carry out the provisions of this section, the Office of State Human Resources shall develop methods and programs to assist and encourage the departments, institutions, and agencies of State government in carrying out this policy and to provide for appropriate study and review of the employment of handicapped persons. (1971, c. 748; 1973, c. 1299; 2013-382, s. 9.1(c); 2014-115, s. 55.4(c).)

Article 2.

Removal of Unfit Officers.

§ 128-16. Officers subject to removal; for what offenses.

Any sheriff or police officer shall be removed from office by the judge of the superior court, resident in or holding the courts of the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:

- (1) For willful or habitual neglect or refusal to perform the duties of his office.
- (2) For willful misconduct or maladministration in office.
- (3) For corruption.
- (4) For extortion.
- (5) Upon conviction of a felony.
- (6) For intoxication, or upon conviction of being intoxicated. (P.L. 1913, c. 761, s. 20; 1919, c. 288; C.S., s. 3208; 1959, c. 1286; 1961, c. 991; 1973, c. 108, s. 82.)

§ 128-17. Petition for removal; county attorney to prosecute.

The complaint or petition shall be entitled in the name of the State of North Carolina, and may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the district attorney of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or district attorney to appear and prosecute this proceeding. (P.L. 1913, c. 761, s. 21; 1919, c. 288; C.S., s. 3209; 1973, c. 47, s. 2.)

§ 128-18. Petition filed with clerk; what it shall contain; answer.

The accused shall be named as defendant, and the petition shall be signed by some elector, or by such officer. The petition shall state the charges against the accused, and may be amended, and

shall be filed in the office of the clerk of the superior court of the county in which the person charged is an officer. The accused may at any time prior to the time fixed for hearing file in the office of the clerk of the superior court his answer, which shall be verified. (P.L. 1913, c. 761, s. 22; 1919, c. 288; C.S., s. 3210.)

§ 128-19. Suspension pending hearing; how vacancy filled.

Upon the filing of the petition in the office of the clerk of the superior court, and the presentation of the same to the judge, the judge may suspend the accused from office if in his judgment sufficient cause appear from the petition and affidavit, or affidavits, which may be presented in support of the charges contained therein. In case of suspension, as herein provided, the temporary vacancy shall be filled in the manner provided by law for filling of the vacancies in such office. (P.L. 1913, c. 761, s. 23; 1919, c. 288; C.S., s. 3211.)

§ 128-20. Precedence on calendar; costs.

In the trial of the cause in the superior court the cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next session after the petition is filed, provided the proceedings are filed in said court in time for said action to be heard. The superior court shall fix the time of hearing. If the final termination of such proceedings be favorable to any accused officer, said officer shall be allowed the reasonable and necessary expense, including a reasonable attorney fee, to be fixed by the judge, he has incurred in making his defense, by the county, if he be a county officer, or by the city or town in which he holds office, if he be a city officer. If the action is instituted upon the complaint of citizens as herein provided, and it appears to the court that there was no reasonable cause for filing the complaint, the costs may be taxed against the complaining parties. (P.L. 1913, c. 761, s. 24; 1919, c. 288; C.S., s. 3212; 1973, c. 108, s. 83.)

Article 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) "Accumulated contribution" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest thereon, as provided in G.S. 128-30, subsection (b).
- (2) "Actuarial equivalent" shall mean a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (3) "Annuity" shall mean payments for life derived from the accumulated contribution of a member. All annuities shall be payable in equal monthly installments.
- (4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed at regular

interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.

- (4a) "Authorized representatives who are assisting the Retirement Systems Division staff" means only other staff of the Department of State Treasurer, staff of the Department of Justice, or persons providing internal auditing assistance required under G.S. 143-746(b).
- (5) "Average final compensation" shall mean the average annual compensation, not including any terminal payments for unused sick leave, of a member during the four consecutive calendar years of creditable service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. Payout of vacation leave shall be included in "average final compensation" only if the payout is received by the member during the four consecutive calendar years of membership service producing the highest average annual compensation of the member.
- (6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Article.
- (7) "Board of Trustees" shall mean the Board provided for in G.S. 128-28 to administer the Retirement System.
- (7a) a. "Compensation" shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee in the unit of the Retirement System for which he is performing full-time work. In addition to the foregoing, "compensation" shall include:
 - 1. Performance-based compensation (regardless of whether paid in a lump sum, periodic installments, or on a monthly basis);
 - 2. Conversion of additional benefits to salary (additional benefits such as health, life, or disability plans), so long as the benefits are other than mandated by State law or regulation;
 - 3. Payment of tax consequences for benefits provided by the employer so long as they constitute an adjustment or increase in salary and not a "reimbursement of expenses";
 - 4. Payout of vacation leave so long as such payouts are permitted by applicable law and regulation;
 - 5. Employee contributions to eligible deferred compensation plans; and
 - 6. Effective July 1, 2009, payment of military differential wages.
- b. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. Notwithstanding any other provision of this Chapter, "compensation" shall not include:

1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
 2. Travel supplement/allowance (nonaccountable allowance plans);
 3. Employer contributions to eligible deferred compensation plans;
 4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);
 5. Reimbursement of uninsured medical expenses;
 6. Reimbursement of business expenses;
 7. Reimbursement of moving expenses;
 8. Reimbursement/payment of personal expenses;
 9. Incentive payments for early retirement;
 10. Bonuses paid incident to retirement;
 11. Contract buyout/severance payments; and
 12. Payouts for unused sick leave.
- c. In the event an employer reports as "compensation" payments not specifically included or excluded as "compensation", such payments shall be "compensation" for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments.
- (7b) "Compliance investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on a Retirement System or benefits administered by the Board of Trustees. The purpose of a compliance investigation is to help detect errors and ensure compliance and full accountability in the use of pension funds.
- (7c) "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items, not seasonally adjusted, standard reference base, as published by the Bureau of Labor Statistics of the U.S. Department of Labor.
- (8) "Creditable service" shall mean the total of "prior service" plus "membership service" plus service, both noncontributory and purchased, for which credit is allowable as provided in G.S. 128-26. In no event, however, shall "creditable service" be deemed "membership service" for the purpose of determining eligibility for benefits accruing under this Chapter.
- (8a) "Duly acknowledged" means notarized, including electronic notarization, or verified through an identity authentication service approved by the Department of State Treasurer.
- (9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to an employee if he worked the full normal working time, including any allowance of maintenance or in lieu thereof received by the member.
- (10) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (11) of this section, whether employed or appointed for stated terms

or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. "Employee" also means all full-time, paid firemen who are employed by any fire department that serves a city or county or any part of a city or county and that is supported in whole or in part by municipal or county funds. "Employee" also includes any participant whose employment 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, if that participant was an employee at the time of the interruption; if the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service. In all cases of doubt the Board of Trustees shall decide who is an employee. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa.

- (11) "Employer" shall mean any county, incorporated city or town, the board of alcoholic control of any county or incorporated city or town, the North Carolina League of Municipalities, and the State Association of County Commissioners. "Employer" shall also mean any separate, juristic political subdivision of the State as may be approved by the Board of Trustees upon the advice of the Attorney General.
- (11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.
- (11b) "Firefighter" means a person (i) who is a full-time paid employee of an employer that participates in the Local Governmental Employees' Retirement System and maintains a fire department certified by the North Carolina Department of Insurance and (ii) who is actively serving in a position with assigned primary duties and responsibilities for the prevention, detection, and suppression of fire.
- (11c) "Fraud investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on the Retirement System. The purpose of a fraud investigation is to help detect and prevent fraud and to ensure full accountability in the use of pension funds.
- (11d) "Law Enforcement Officer" means a full-time paid employee of an employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Article 1 of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. "Law enforcement officer"

also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number of law enforcement positions approved by the applicable local governing board.

- (12) "Medical board" shall mean the board of physicians provided for in G.S. 128-28, subsection (I).
- (13) "Member" shall mean any person included in the membership of the Retirement System as provided in G.S. 128-24.
- (14) "Membership service" shall mean service as an employee rendered while a member of the Retirement System or membership service in a North Carolina Retirement System that has been transferred into this system.
- (15) "Pension" shall mean payments for life derived from money provided by the employer. All pensions shall be payable in equal monthly installments.
- (16) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (17) "Prior service" shall mean the service of a member rendered before the date he becomes a member of the System, certified on his prior service certificate and allowable as provided by G.S. 128-26. No prior service shall be allowed at any employer for which participation is adopted and approved by the Board of Trustees in this Retirement System on or after August 1, 2015.
- (18) "Regular interest" shall mean interest compounded annually at such rate as shall be determined by the Board of Trustees in accordance with G.S. 128-29, subsection (b).
- (18a) "Regularly employed" shall mean employment in a position for which the duties require not less than 1,000 hours of work in a calendar year, provided that the term shall not include any individuals whose employment is considered "temporary employment" as defined in subdivision (22b) of this section or "statutorily-required interim employment" as defined in subdivision (22a) of this section.
- (18b) "Rescue squad worker" means a person (i) who is a full-time paid employee of an employer that participates in the Local Governmental Employees' Retirement System and maintains a rescue squad or emergency medical services team certified by the North Carolina Department of Insurance or the Department of Health and Human Services and (ii) who is actively serving in a position with assigned primary duties and responsibilities for the alleviation of human suffering and assistance to persons who are in difficulty, who are injured, or who become suddenly ill, by providing proper and efficient care or emergency medical services.
- (19) "Retirement" under this Article shall mean the commencement of monthly retirement benefits, along with the termination of employment and the complete separation from active service with no intent or agreement, expressed or implied, to return to service. A retirement allowance under the provisions of this Article may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must

perform no work for a participating employer, including part-time, temporary, substitute, or contractor work, at any time during the same month immediately following the effective first day of retirement.

- (20) "Retirement allowance" shall mean the sum of the annuity and the pension, or any optional benefit payable in lieu thereof.
- (21) "Retirement System" shall mean the North Carolina Local Governmental Employees' Retirement System as defined in this Article.
- (22) "Service" shall mean service as an employee as described in subdivision (10) of this section and paid for by the employer as described in subdivision (11) of this section.
- (22a) "Statutorily-required interim employment" shall mean individuals whose employment for an employer as defined in subdivision (11) of this section occurs as a result of the individual's designation by the city council as an interim city manager, as provided in G.S. 160A-150 for a period not to exceed 12 months on a nonrecurring basis, or as a result of the individual's designation by the board of commissioners as an interim county manager, as provided in G.S. 153A-84 for a period not to exceed 12 months on a nonrecurring basis.
- (22b) "Temporary employment" shall mean employment for a limited term, in no case to exceed 12 consecutive months on a nonrecurring basis, for an employer as defined in subdivision (11) of this section.
- (23) "Year" shall mean the regular fiscal year beginning July 1, and ending June 30; in the following calendar year unless otherwise defined by regulation of the Board of Trustees. (1939, c. 390, s. 1; 1941, c. 357, s. 1; 1943, c. 535; 1945, c. 526, s. 1; 1947, c. 833, ss. 1, 2; 1949, c. 231, ss. 1, 2; 1949, c. 1015; 1959, c. 491, ss. 1, 2; 1961, c. 515, s. 5; 1965, c. 781; 1971, c. 325, ss. 1-4; 1975, 2nd Sess., c. 983, s. 125; 1977, c. 316, ss. 1, 2; 1981, c. 557, ss. 1, 2; 1985, c. 479, s. 196(b); c. 649, s. 3; 1991, c. 51, s. 1; 1991 (Reg. Sess., 1992), c. 762, ss. 1, 2; 1997-144, s. 1; 1999-167, ss. 1, 2; 1999-456, s. 37; 2001-426, s. 1; 2003-359, ss. 13, 14; 2009-66, ss. 2(a), 6(f), (j); 2011-92, s. 1; 2011-294, s. 4; 2012-185, s. 2(a); 2013-288, ss. 3(b), 4(b); 2014-97, s. 4(b); 2015-164, s. 8; 2015-168, s. 5; 2017-125, s. 1(b); 2017-128, s. 1(e), (f), (g); 2020-48, s. 1.1(a).)

§ 128-22. Name and date of establishment.

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Article for employees of those counties, cities and towns or other eligible employers participating in the said Retirement System. Following the filing of the application as provided in G.S. 128-23(c), the Board shall set a date, effective the first day of a calendar quarter, not more than 90 days thereafter, as of which date participation of the employer may begin, which date shall be known as the date of participation for such employer: Provided, that in the judgment of the Board of Trustees an adequate number of persons have indicated their intention to participate; otherwise at such later date as the Board of Trustees may set.

This Retirement System is a governmental plan, within the meaning of Section 414(d) of the Internal Revenue Code. Therefore, the nondiscrimination rules of Sections 401(a)(5) and 401(a)(26) of the Code do not apply. This System shall have the power and privileges of a corporation and shall be known as the "North Carolina Local Governmental Employees' Retirement System," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held.

Consistent with Section 401(a)(1) of the Internal Revenue Code, all contributions from participating employers and participating employees to this Retirement System shall be made to funds held in trust through trust instruments that have the purposes of distributing trust principal and income to retired members and their beneficiaries and of paying other definitely determinable benefits under this Chapter, after meeting the necessary expenses of administering this Retirement System. Neither the trust corpus nor income from this trust can be used for purposes other than the exclusive benefit of members or their beneficiaries, except that employer contributions made to the trust under a good faith mistake of fact may be returned to an employer, where the refund can occur within less than one year after the mistaken contribution was made, consistent with the rule adopted by the Board of Trustees. The Retirement System shall have a consolidated Plan document, consisting of Article V, Section 6(2) of the North Carolina Constitution, relevant statutory provisions in this Chapter, associated regulations in the North Carolina Administrative Code, substantive and procedural information on the official forms used by the Retirement System, and policies and minutes of the Board of Trustees. (1939, c. 390, s. 2; 1941, c. 357, s. 2; 1943, c. 535; 1945, c. 526, s. 2; 1959, c. 491, s. 3; 2012-130, s. 7(b).)

§ 128-23. Acceptance by cities, towns and counties.

(a) Pursuant to the favorable vote of a majority of the employees of any incorporated city or town, the governing body may, by resolution legally adopted and approved by the Board of Trustees, elect to have its employees become eligible to participate in the Retirement System, and the said municipal governing body may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same.

(b) Pursuant to the favorable vote of a majority of the employees of the county, the board of commissioners of any county may, by resolution legally adopted and approved by the Board of Trustees, elect to have its employees become eligible to participate in the Retirement System. Each county is authorized to make appropriations for these purposes and to fund them by levy of property taxes as authorized by Article 7 of Chapter 153A of the General Statutes and by the allocation of other revenues whose use is not otherwise restricted by law.

(c) Any eligible employer desiring to participate in the Retirement System shall file with the Board of Trustees an application for participation under the conditions included in this Article on a form approved by the Board of Trustees. In such application the employer shall agree to make the contributions required of participating employers, to deduct from the salaries of employees who may become members the contributions required of members under this Article, and to transmit such contributions to the Board of Trustees. It shall also agree to make the employer's contributions for the participation in

the Retirement System of all employees entering the service of the employer, after its participation begins, who shall become members.

(d) Such contributions as are made by employers shall be regarded as additions to the compensation of such employees as are members of the Retirement System and deducted therefrom for the purpose of making the employer's contribution, in addition to the deduction from the compensation of employees on account of member contributions.

(e) The agreement of such employer to contribute on account of its employees shall be irrevocable, but should an employer for any reason become financially unable to make the normal and accrued liability contributions payable on account of its employees, then such employer shall be deemed to be in temporary default. Such temporary default shall not relieve such employer from any liability for its contributions payable on account of its employees.

Notwithstanding anything to the contrary, the Retirement System shall not be liable for the payment of any pensions or other benefits on account of the employees or pensioners of any employer under this Article, for which reserves have not been previously created from funds contributed by such employer or its employees for such benefits.

(f) Effective January 1, 1955, there shall be three classes of employers to be designated Class A, Class B and Class C, respectively. Each employer whose date of participation occurs before July 1, 1951, shall be a Class A employer unless such an employer by written notice filed with the Board of Trustees on or before June 30, 1951, elected to be a Class B employer. Each employer whose date of participation occurs on or after July 1, 1951, but before January 1, 1955, shall be a Class A employer. Each employer whose date of participation occurs on or after January 1, 1955, shall be a Class C employer.

(g) Notwithstanding any other provisions of this Article, any employer who is not a participating employer and who employs law enforcement officers transferred from the Law Enforcement Officers' Retirement System to this Retirement System on January 1, 1986, or who employs law enforcement officers electing to become members of this Retirement System on and after January 1, 1986, shall be employers participating in this Retirement System as this participation pertains to their law enforcement officers. The election of membership in this Retirement System shall be at the sole discretion of law enforcement officers of participating employers described in this subsection. (1939, c. 390, s. 3; 1951, c. 274, s. 1; 1955, c. 1153, s. 1; 1971, c. 325, s. 5; 1973, c. 803, s. 16; 1985, c. 479, s. 196(c); 1991, c. 585, s. 1; 2020-48, s. 1.14.)

§ 128-23.1. Inactive employers.

(a) An employer shall be considered an inactive employer if all of the following criteria are met:

- (1) The employer has no employees that qualify for membership in the Retirement System.
- (2) The employer has made no employer contributions for at least one month.
- (3) The employer makes a request in writing to the Retirement Systems Division of the Department of State Treasurer to be made inactive.

(4) The Retirement Systems Division of the State Treasurer has reviewed the employer request to become inactive and has granted that request. The Retirement Systems Division shall provide written notification to the requesting employer of any decisions made under this section.

(b) Not later than April 30 of each calendar year, the Retirement Systems Division of the Department of State Treasurer shall make a report to the Board on all employers who were determined to be inactive employers in that preceding calendar year. (2020-48, s. 1.9(b).)

§ 128-24. Membership.

The membership of this Retirement System shall be composed as follows:

(1) All employees entering or reentering the service of a participating employer after the date of participation in the Retirement System of the employer. On and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act who are required to accept a federal Civil Service appointment may elect in writing on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the local Retirement System. At such time as Cooperative Agricultural Extension Service Employees excluded from coverage under Title II of the Social Security Act become covered by Title II of the Social Security Act, such employees shall no longer be covered by the provisions of this section, provided no accrued rights of these employees under this section prior to coverage by Title II of the Social Security Act shall be diminished.

(1a) A member shall cease to be a member only if the member withdraws his or her accumulated contributions, or becomes a beneficiary, or dies.

(2) All persons who are employees of a participating county, city, or town except those who shall notify the Board of Trustees in writing, on or before 30 days following the date of participation in the Retirement System by such county, city or town: Provided, further, that employees of county social services and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation. Any member on or after July 1, 1969, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.

(3) Effective January 1, 1955, there shall be three classes of members, to be designated Class A, Class B and Class C respectively. Each member who is an

employee of a Class A employer shall be a Class A member; each member who is an employee of a Class B employer shall be a Class B member; and each member who is an employee of a Class C employer shall be a Class C member.

(3a) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1.

(4) The provisions of this subdivision (4) shall apply to any member whose retirement became effective prior to July 1, 1965, and became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 128-27(b1) as in effect at the date of such separation from service.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of 60 years, or if a uniformed policeman or fireman upon the date he shall have attained the age of 55 years; provided that such member may retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 120 days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b), paragraphs (1), (2) and (3).

b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 120 days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age 60 years, or if a uniformed policeman or fireman at the attainment of age 55 years, upon proper application therefor.

c. Should an employee who retired on an early or service retirement allowance be restored to service prior to the time he shall have attained the age of 62 years, or if a uniformed policeman or fireman prior to the

time he shall have attained the age of 55 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon his subsequent retirement, he shall be entitled to an allowance not less than the allowance described in 1 below reduced by the amount in 2 below.

1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
 2. The actuarial equivalent of the retirement benefits he previously received.
- d. Should an employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1 and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 128-21(3).
- (5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforesated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article

pertaining to a member who is not a law enforcement officer or eligible former law enforcement officer.

- b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

| Age at Retirement | Percentage Reduction |
|-------------------|----------------------|
| 59 | 7 |
| 58 | 14 |
| 57 | 20 |
| 56 | 25 |
| 55 | 30 |
| 54 | 35 |
| 53 | 39 |
| 52 | 43 |
| 51 | 46 |
| 50 | 50 |

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation

from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.

- b3. Deferred retirement allowance of members retiring on or after July 1, 1995. – In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.
- c. Should a beneficiary who retired on an early or service retirement allowance 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 fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year, except when the reemployment earnings exceed the amount above in the month of December, in which case the retirement allowance shall not be suspended. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on

January 1 of each year by the percentage change between the December Consumer Price Index in the year prior to retirement and the December Consumer Price Index in the year most recently ended, calculated to the nearest tenth of a percent (1/10 of 1%), provided that this percentage change is positive.

- c1. **(Effective until July 1, 2021)** Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub-subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If such a report is not received within the required 90 days, the Board may assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer failed to report, with a minimum penalty of twenty-five dollars (\$25.00). Upon receipt by the employer of notice that a penalty has been assessed under this sub-subdivision, the employer shall remit the payment of the penalty to the Retirement System, in one lump sum, no later than 90 days from the date of the notice.
- c1. **(Effective July 1, 2021)** Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub-subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If the required report is not received within the required 90 days, the Board may do any or all the following:
 1. Assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported reemployed beneficiaries

during the months for which the employer failed to report, with a minimum penalty of twenty-five dollars (\$25.00).

2. Require the employer to reimburse the Retirement System for any retirement allowance paid to the beneficiary during a period when the allowance would have been suspended under sub-subdivision c. of this subdivision had the report been received within the required 90 days.
3. Require the employer to pay any amounts that the beneficiary would have been required to pay to the Retirement System under sub-subdivision f. of this subdivision had the report been received within the required 90 days.

Upon receipt by the employer of notice that any payment is due to the Retirement System under this sub-subdivision, the employer shall remit the payment of the amount due to the Retirement System, in one lump sum, no later than 90 days from the date of the notice.

If an employer is required to make payments to the Retirement System under sub-sub-subdivision 2. or sub-sub-subdivision 3. of this sub-subdivision, then (i) the beneficiary shall have no obligation to reimburse the Retirement System for related amounts under sub-subdivisions c. or e. of this subdivision, (ii) the provisions of G.S. 128-31(b) relating to offsetting overpayments against payments made from the Retirement System to the member or beneficiary shall not apply, (iii) the Retirement System shall have no duty under G.S. 143-64.80 to pursue repayment of overpayments from the beneficiary, (iv) the overpayments shall not be considered a debt of the beneficiary under Chapter 105A of the General Statutes, and (v) the beneficiary's effective date of retirement shall be adjusted if the adjustment is required under sub-subdivision e. of this subdivision.

- d. Should a beneficiary who retired on an early or service retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional

modification. In the alternative, the member may receive a refund of the member's accumulated contributions for the period of service after restoration to service in accordance with G.S. 128-27(f).

2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification. In the alternative, the member may receive a refund of the member's accumulated contributions for the period of service after restoration to service in accordance with G.S. 128-27(f), or the member may allow this new account to remain inactive.
- e. 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 month 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 one-month separation required by G.S. 128-21(19).
 2. The member shall make a lump-sum payment to the Retirement System equal to three times the amount of compensation earned during the month immediately following the effective date of retirement.
- (5a) Notwithstanding the provisions of paragraphs c and d of the subdivision (5) to the contrary, a beneficiary who was a beneficiary retired on an early or service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System on January 1, 1986, and who also was a contributing member of this Retirement System on January 1, 1986, shall continue to be paid

his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on an early or service retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee by an employer participating in the Retirement System after January 1, 1986, becomes subject to the provisions of G.S. 128-24(5)c. and G.S. 128-24(5)d. on and after January 1, 1989.

- (6) Employees of a sending agency participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 shall remain members entitled to all benefits of the System provided that the requirements of Article 10 of Chapter 126 are met; provided further, that a member may retain membership status while serving as an assigned employee or employee on leave under the provisions of Article 10 of Chapter 126 for purposes of receiving the death benefit regardless of whether he and his employer are contributing to his account during the exchange period except that no duplicate benefits shall be paid. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1; 1965, c. 781; 1967, c. 978, ss. 1, 2; 1969, c. 442, ss. 1-5, 7; c. 982; 1971, c. 325, ss. 6-8; c. 326, ss. 1, 2; 1973, c. 243, s. 1; 1977, c. 783, s. 2; 1981, c. 979, s. 2; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1106, ss. 1, 2; 1985, c. 479, s. 196(d)-(g); c. 649, s. 2; 1987, c. 513, s. 1; c. 738, s. 38(a); 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(a), 7.31(a), (b); 1995, c. 507, s. 7.22(d); 2002-126, s. 28.13(b); 2007-431, s. 10; 2009-66, ss. 3(g), (h), 8(b), 12(e), (f); 2010-72, s. 4(b); 2011-294, s. 2(b); 2012-130, s. 1; 2014-97, s. 4(e); 2015-164, s. 11(b); 2020-29, ss. 1(j), 7(b).)

§ 128-25: Repealed by Session Laws 2016-56, s. 2, effective June 30, 2016.

§ 128-26. Allowance for service.

(a) Each person who becomes a member during the first year of his or her employer's participation, if and only if that participation begins prior to November 1, 2015, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him or her to that employer prior to the date of participation for which he or she claims credit.

A participating employer may allow prior service credit to any of its employees on account of: their earlier service to the aforesaid employer; or, their earlier service to any other employer as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State.

A participating employer may allow prior service credit to any of its employees on account of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent

of such service prior to the establishment of the Teachers' and State Employees' Retirement System on July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum an amount calculated on the basis of compensation the employee earned when the employee first entered membership and the employee contribution rate at that time together with interest thereon from year of first membership to year of payment shall be one half of the calculated cost.

(a1) With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the Armed Forces of the United States if the person returned to the service of the person's employer within two years after having been not dishonorably discharged, or becoming entitled to be discharged, released, or separated from such the Armed Forces of the United States; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if the member submits satisfactory evidence of the military service claimed and the participating unit of which the member is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period of qualifying service in the Armed Forces of the United States, as defined for purposes of reemployment rights under federal law, provided that the member was an employee as defined in G.S. 128-21(10) at the time the member entered military service, and either (i) the returning member is in service, with the employer by whom the member was employed when the member entered military service, for a period of not less than 10 years after the member is separated or released from that military service under other than dishonorable conditions or (ii) the following conditions are met, in the conjunctive:

- (1) The member did not, prior to leaving for military service, provide clear written notice of an intent not to return to work after military service.
- (2) The member was discharged from uniformed service and returned from the leave of absence for uniformed service to membership service in this system within the time limit mandated by federal law for reporting back to work.
- (3) The period of uniformed service, for which additional service credit is sought, has been verified by suitable documentation and is not eligible for receipt of benefits under any other retirement system or pension plan.
- (4) All service credit forfeited by a refund pursuant to the provisions of G.S. 128-27(f) has been purchased.

The uniformed service credit allowed under this subsection shall be limited to a maximum of five years unless otherwise specifically exempted from that durational limitation by federal law. The salary or compensation of such an employee during the period of qualifying military service shall be deemed to be that salary or compensation the employee would have received but for the period of service had the employee remained continuously employed, if the determination of that salary or compensation is reasonably certain. If the determination of the salary or compensation is not reasonably certain, then it

shall be deemed to be that employee's average rate of compensation during the 12-month period immediately preceding the period of service.

Pursuant to 38 U.S.C. § 4318(b)(1), when a member who has been on military leave returns to work consistent with the provisions of this subsection concerning return to service within two years after the member's earliest eligibility for separation or release from military service, then the member's employer must remit to the System all the employer and employee contributions for the full period of that member's military service.

(b) In no case shall more than one year of service be creditable for all service in one calendar year.

(c), (d) Repealed by Session Laws 2020-29, s. 1(b), effective June 19, 2020.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by the member since he or she last became a member, and also if the member has a prior service certificate which is in full force and effect, the amount of the service certified on the prior service certificate; and if the member has sick leave standing to the member's credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction. However, in no instance shall unused sick leave be credited to a member's account at retirement if the member's last day of actual service is more than 365 days prior to the effective date of the member's retirement. Days of sick leave standing to a member's credit at retirement shall be determined by dividing the member's total hours of sick leave at retirement by the hours per month such leave was awarded under the employer's duly adopted sick leave policy as the policy applied to the member when the leave was accrued.

(e1) On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied.

(f) Repealed by Session Laws 2020-29, s. 1(b), effective June 19, 2020.

(g) During periods when a member is on 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.

(h) Creditable service at retirement shall include any service rendered by a member while on leave of absence to serve as a member or officer of the General Assembly which is not creditable toward retirement under the Legislative Retirement Fund provided the allowance of such credit shall be contingent upon the cancellation of service credit in the fund and the transfer of the member's contributions plus accumulated interest from the fund to this System.

(h1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(i) Notwithstanding any other provision of this Chapter, on or before December 31, 2021, any person who withdrew his or her contributions in accordance with the provisions of G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of five years of prior and current membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal(s). These provisions shall apply equally to retired members who had attained five years of prior and current membership service prior to retirement. The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the amount of the retirement allowance, under any optional allowance elected at the time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

(i1) North Carolina Withdrawn Service Purchased On and After January 1, 2022. Notwithstanding any other provision of this Article to the contrary, on and after January 1, 2022, any member who withdrew his or her contributions in accordance with the provisions of G.S. 128-27(f) or G.S. 135-5(f) or the rules of the Law Enforcement Officers' Retirement System, and who subsequently returns to service and completes five years of membership service upon that return, while in service may purchase an amount of creditable service totaling the amount of the membership service associated with the withdrawn contributions, provided that the total of the creditable service purchased under this subsection may not exceed a total of five years. 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.

Subject to the requirements of this subsection, an employer may pay all or part of the cost of a service purchase of a member in service. To the extent that the purchase is paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund. To the extent that the purchase is paid by the member, the cost paid by the member shall be credited to the member's annuity savings account.

(j) Repealed by Session Laws 1987, c. 617, s. 3.

(j1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service for service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

- (1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, and whose membership began on or prior to January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when the member first entered membership service times the employee contribution rate at that time times the months of service to be purchased multiplied by a factor equivalent to the investment return assumptions determined by the Board of Trustees, compounded annually, from the initial year of membership to the year of payment so as to equal one-half of the cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.
- (2) For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph (1) of this subdivision, whose membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service

credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of "active duty", as defined in 38 U.S. Code Section 101(21), in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of "active duty", as defined in 38 U.S. Code Section 101(21), as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the National Guard or any reserve component of the Armed Forces of the United States, and shall not include periods of "active duty for training", as defined in 38 U.S. Code Section 101(22), or periods of "inactive duty training", as defined in 38 U.S. Code Section 101(23), rendered in any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership or prior service credits transferred to this Retirement System pursuant to G.S. 128-24.

(j2) Notwithstanding any other provision of this Chapter, on or before December 31, 2021, any member and any retired member as herein described may purchase creditable service previously rendered to the federal government or to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump-sum payment determined as follows:

- (1) For members who completed 10 years of prior and current membership service, and retired members who completed 10 years of prior and current membership service prior to retirement, and whose membership began on or before January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when the member first entered membership service, times the employee contribution rate at that time, times the months of service to be purchased, times two, multiplied by a factor equivalent to the investment return assumptions determined by the Board of Trustees, compounded annually, from the initial year of membership to the year of payment so as to equal the full cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

- (2) For members who complete five years of prior and current membership service, and retired members who complete five years of prior and current membership service prior to retirement, and eligible members and retired members covered by subdivision (1) of this subsection, whose membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance. Notwithstanding the requirement of five years of current membership service, a member whose membership began prior to the service the member desires to purchase shall be eligible to purchase creditable service under this subdivision upon returning to service as an employee upon completion of a total of five years of membership service and upon completion of one year of current membership service.

Current membership service shall mean membership service earned since the service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State. Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each year of service in this State, with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service.

(j3) Notwithstanding any provision of this Article to the contrary, on and after January 1, 2022, any member in service with five or more years of membership service may purchase creditable service previously rendered to the federal government or to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump sum payment. The amount of creditable service purchased under this subsection may not exceed a total of five years. 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 increases as set by the Board of Trustees upon the advice of the consulting actuary shall also include an administrative fee to be set by the Board.

Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each year of membership service in this State, with a maximum allowable of five years of out-of-state service. Such service is limited to full-time service that would be allowable under the laws governing this Retirement System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service.

Subject to the requirements of this subsection, an employer may pay all or part of the cost of a service purchase of a member in service. To the extent that the purchase is paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund. To the extent that the purchase is paid by the member, the cost paid by the member shall be credited to the member's annuity savings account.

(k) Notwithstanding any language to the contrary of any provision of this section, or of any repealed provision of this section that was repealed with the inchoate and accrued rights preserved, all repayments and purchases of service credits, allowed under the provisions of this section or of any repealed provision of this section that was repealed with inchoate and accrued rights preserved, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purchases of the actuarial valuation of the System's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. Notwithstanding the foregoing, on and after January 1, 2003, the provisions of this subsection shall not apply to the repayment of contributions withdrawn pursuant to subsection (i) of this section.

(l) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

- (1) Leaves of Absence Terminated Prior to July 1, 1983. – The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising

on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

- (2) Leaves of Absence Terminating On and After July 1, 1983. – The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates on and after July 1, 1983, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from end of the leave of absence equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from the end of the leave of absence shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

Whenever the creditable service purchased pursuant to this subsection 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. 128-21(5) had the member not been on leave of absence without pay, then the compensation that the member would have received during the purchased period shall be included in calculating the member's average final compensation. In such cases, the compensation that the member would have received during the purchased period shall be based on the annual rate of compensation of the member immediately prior to the leave of absence.

In the case of a law enforcement officer electing to purchase service under this section who is in receipt of benefits under the North Carolina Workers' Compensation Act due to serious bodily injury suffered in the line of duty as a result of an intentional or unlawful act of another, as certified by the head of the employing law enforcement agency, and whose approved leave of absence terminates on or before a return to service on and after August 1, 2006, the employer percentage rate of contribution payable under subdivision (2) of this subsection shall be made by the employer that granted the leave of absence. The cost to the law enforcement officer shall be reduced by the amount paid by the employer. For purposes of this subsection, "serious bodily injury" means bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Nothing in this subsection prevents an employer from voluntarily paying all or a part of the employee portion of the total cost of the service credit purchased, and the employer

does not discriminate against any eligible law enforcement officer in this subsection employed by the employer by paying that portion of cost. To the extent paid by the employer, the employee portion paid by the employer shall be credited to the Pension Accumulation Fund; to the extent paid by the member, the employee portion paid by the member shall be credited to the member's annuity savings account. A member shall pay any part of the employee portion of the total cost not paid by the employer.

(m) Omitted Membership Service. – A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

- (1) within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or
- (2) after 90 days and prior to three years of the omission, 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; or
- (3) after three years of the omission, by the payment of an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service. In the event an employer pays all or a part of the full actuarial cost as determined in subdivision (3) of this subsection, the employer may, at its option, pay such amount either in a lump sum or by increasing its "accrued liability contribution" for the remainder of its accrued liability period. In the event an employer has satisfied its accrued liability contribution, the employer may amortize its portion of the full actuarial cost over a period not to exceed ten years. The expense of making an actuarial valuation to determine the accrued liability contribution or the additional accrued liability

contribution, required to amortize the portion of the full actuarial cost paid by the employer, shall be paid by the employer in a lump sum at the time of the actuarial valuation.

(n) Repealed by Session Laws 2002-153, s. 3, effective January 1, 2003.

(o) Credit at Full Cost for Federal Employment. Notwithstanding any other provisions of this Chapter, a member in service with five or more years of membership service may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The amount of creditable service purchased under this subsection may not exceed a total of five years. The member shall purchase this service by making a lump sum amount payable 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.

Subject to the requirements of this subsection, an employer may pay all or part of the cost of a service purchase of a member in service. To the extent that the purchase is paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund. To the extent that the purchase is paid by the member, the cost paid by the member shall be credited to the member's annuity savings account.

On or before December 31, 2021, members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes.

(p) Repealed by Session Laws 2020-29, s. 1(b), effective June 19, 2020.

(p1) Part-Time Service Credit. Notwithstanding any other provision of this Article to the contrary, any member in service with five or more years of membership service may purchase service previously rendered as a part-time teacher or employee of an employer, as defined in G.S. 135-1(11) or G.S. 128-21(11), except the following service may not be purchased:

- (1) Part-time service rendered as a bus driver to a public school while a full-time high school student.
- (2) Temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program, unless that service was

rendered on a permanent part-time basis and required at least 20 hours of service per week.

Payment for service purchased under this subsection shall be made in a single lump sum in an amount calculated by applying the ratio of actual gross compensation earned as a part-time employee to the gross compensation that would have been earned as a full-time employee to the period of service rendered in months. 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.

The Board of Trustees shall adopt rules regarding how much service in any year, as based on compensation, is equivalent to one year of service in proportion to earnable compensation, but in no case shall more than one year of service be creditable for all service in one year. Service rendered for the regular school year in any district shall be equivalent to one year of service.

Subject to the requirements of this subsection, an employer may pay all or part of the cost of a service purchase of a member in service. To the extent that the purchase is paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund. To the extent that the purchase is paid by the member, the cost paid by the member shall be credited to the member's annuity savings account.

(q) Credit at Full Cost for Probationary Employment Purchased On or Before December 31, 2021. Notwithstanding any other provision of this Chapter, on or before December 31, 2021, a member may purchase creditable service, prior to retirement, for employment with an employer as defined in this Article when considered to be in a probationary or employer imposed waiting period status and thereby not regularly employed, between date of employment and date of membership service with the retirement system, provided that the employer or former employer of such a member has revoked this probationary employment or waiting period policy.

Provided, the member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the retirement system, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. In no instance shall the amount payable be less than the contributions a member would have made during the employment plus four percent (4%) interest compounded annually.

Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the probationary employment; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the member shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in its current employ in paying all or any part of the cost of the probationary employment. In the event an employer pays all or a part of the full actuarial cost, the employer may, at its option, pay such amount either in a lump sum or by increasing its "accrued liability contribution" for the remainder of its accrued liability period. In the event an employer has satisfied its accrued liability contribution, the employer may amortize its portion of the full actuarial cost over a period not to exceed 10 years. The expense of making an actuarial valuation to determine the accrued liability contribution or the additional accrued liability contribution, required to amortize the portion of the full actuarial cost paid by the employer, shall be paid by the employer in a lump sum at the time of the actuarial valuation.

(q1) Credit at Full Cost for Probationary Employment Purchased On or After January 1, 2022. Notwithstanding any other provision of this Chapter, on and after January 1, 2022, a member in service with five or more years of service may purchase creditable service for employment with an employer as defined in this Article when considered to be in a probationary or employer-imposed waiting period status and thereby not regularly employed between date of employment and date of membership service with the retirement system. The amount of creditable service purchased under this subsection may not exceed five years.

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 increases as set by the Board of Trustees upon the advice of the consulting actuary shall also include an administrative fee to be set by the Board.

Subject to the requirements of this subsection, an employer may pay all or part of the cost of a service purchase of a member in service. To the extent that the purchase is paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund. To the extent that the purchase is paid by the member, the cost paid by the member shall be credited to the member's annuity savings account.

(r) Credit at Full Cost for Temporary Government Employment. Notwithstanding any other provisions of this Chapter, any member in service with five or more years of membership service may purchase creditable service for government employment when classified as a temporary employee subject to all the following conditions:

- (1) The member was employed by an employer as defined in G.S. 128-21(11) or G.S. 135-1(11).
- (2) The member's temporary employment met all other requirements of G.S. 128-21(10), or G.S. 135-1(10) or (25).
- (3) The member has completed five years or more of membership service.
- (4) The member has acquired from the employer such certifications of temporary employment as are required by the Board of Trustees.

The amount of creditable service purchased under this subsection may not exceed a total of five years. A member shall purchase this service by making a lump sum payment into 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.

Subject to the requirements of this subsection, an employer may pay all or part of the cost of a service purchase of a member in service. To the extent that the purchase is paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund. To the extent that the purchase is paid by the member, the cost paid by the member shall be credited to the member's annuity savings account.

(s) Credit at Full Cost for Employment Not Otherwise Creditable. Notwithstanding any other provisions of this Chapter, any member in service with five or more years of membership service may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in any other retirement system or plan, provided that the employer is, at the time of purchase, a participating employer in the Retirement System but was not a participating employer in the Retirement System at the time the service was rendered by the member. The amount of creditable service purchased under this subsection may not exceed a total of five years. A member shall purchase this service by making a lump sum payment into 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.

Subject to the requirements of this subsection, an employer may pay all or part of the cost of a service purchase of a member in service. To the extent that the purchase is paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund. To the extent that the purchase is paid by the member, the cost paid by the member shall be credited to the member's annuity savings account.

(t) Purchase of Service Credits Through Rollover Contributions From Certain Other Plans. – Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. – Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(u) Purchase of Service Credits Through Plan-to-Plan Transfers. – Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code

which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(u1) Expired.

(v) Retroactive Membership Service. – A member who is reinstated to service as an employee as defined in G.S. 128-21(10) retroactively to the date of prior involuntary termination with back pay 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 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 equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, taking into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost," "full liability," and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the retroactive membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the member shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the retroactive membership service.

In the event a member received a return of accumulated contributions subsequent to an involuntary termination as provided in G.S. 128-27(f), the member may redeposit, within 90 days of reinstatement retroactive to the date of prior involuntary termination, in the annuity savings fund by single payment, an amount equal to the total amount he previously withdrew plus regular interest and restore the creditable service forfeited upon receiving his return of accumulated contributions.

(w) If a member who is an elected government official and has not vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 128-38.4 for acts committed after July 1, 2007, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is an elected government official and has vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 128-38.4 for acts committed after July 1, 2007, then that member is not entitled to any creditable service that accrued after July 1, 2007, regardless of whether that creditable service was earned by virtue of membership in the System, accrued by conversion of sick leave at the point of the member's retirement, accrued by transfer of service from another retirement system, purchased by the member in accordance with this Article, or accrued by any other means. No member shall forfeit any benefit or creditable service earned from a position not as an elected government official. For purposes of this subsection, creditable service attributable to the conversion of sick leave accrues in this System on the date of retirement, service transferred to this System from another system accrues in this System on the effective date of the transfer, and purchased service accrues in this System on the date of the purchase.

(x) If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 128-38.4A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 128-38.4A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012, regardless of whether that creditable service was earned by virtue of membership in the System, accrued by conversion of sick leave at the point of the member's retirement, accrued by transfer of service from another retirement system, purchased by the member in accordance with this Article, or accrued by any other means. For purposes of this subsection, creditable service attributable to the conversion of sick leave accrues in this System on the date of retirement, service transferred to this System from another system accrues in this System on the effective date of the transfer, and purchased service accrues in this System on the date of the purchase.

(y) **Contribution-Based Benefit Cap Purchase Provision.** – If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 128-27(a3), the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of

retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, the retirement system may allow an employer of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the lump-sum amount required in this subsection on an installment payment plan under one of the following two options:

- (1) Option one. – An installment payment plan ending no more than 15 months after the retirement of the member.
- (2) Option two. – An installment payment plan beginning no less than 90 days after the retirement of the member and ending no more than 27 months after the retirement of the member. Interest shall be assessed on the principal amount of the contribution-based benefit cap liability owed and applied to any installment payment plan term exceeding 12 months at a rate corresponding with the interest rate assumption based on the most recent actuarial valuation approved by the Board of Trustees.

Payment under both installment plans must be completed regardless of whether the member continues to receive a recurring monthly retirement benefit through the end of the installment period. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4; 1975, c. 205, s. 1; c. 485, ss. 1-3; 1977, c. 973; 1979, c. 866, s. 1; c. 868, ss. 1, 2; c. 1059, s. 1; 1981, c. 557, s. 3; 1981 (Reg. Sess., 1982), c. 1283, s. 1; c. 1396, s. 3; 1983, c. 533, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 231; 1985, c. 407, s. 1; c. 479, s. 196(h); c. 649, ss. 1, 4; 1987, c. 533, s. 2; c. 617, ss. 1-4; c. 717, s. 1; 1987 (Reg. Sess., 1988), c. 1088, ss. 5, 6; c. 1110, s. 8; 1989, c. 255, ss. 1-10; c. 762, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 28; 1991, c. 753, s. 1; 1991 (Reg. Sess., 1992), c. 1017, s. 1; 1995, c. 507, s. 7.23D(a); 1998-71, ss. 1, 2; 1998-214, s. 1; 1999-158, s. 1; 2001-487, s. 82; 2002-71, s. 3; 2002-153, ss. 1-3; 2003-359, ss. 17-19, 22; 2005-91, s. 8; 2006-29, s. 1; 2007-179, s. 2(b); 2007-304, s. 1; 2009-281, s. 1; 2009-392, s. 1; 2010-72, s. 5(b); 2011-183, ss. 97(a), (b); 2011-294, s. 5(b); 2012-130, s. 3(a); 2012-193, s. 4; 2013-288, ss. 2(a), 11; 2013-405, s. 6(b); 2014-88, s. 1(d); 2015-168, ss. 6, 7(b); 2016-56, s. 3; 2017-128, s. 2(b); 2017-129, s. 9(b); 2020-29, s. 1(b); 2020-48, ss. 4.4(c), (d).)

§ 128-26A. Reciprocity of creditable service with other State-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Legislative Retirement System, Consolidated Judicial Retirement System, or the Teachers' and State Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the

retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Legislative Retirement System, Consolidated Judicial Retirement System, or the Teachers' and State Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits. (1989 (Reg. Sess., 1990), c. 1066, s. 35(b).)

§ 128-27. Benefits.

(a) Service Retirement Benefits. –

- (1) Any member may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a firefighter or rescue squad worker, he shall have attained the age of 55 years and have at least five years of creditable service.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Repealed by Session Laws 1971, c. 325, s. 12.
- (4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired.
- (5) Any member who is a law enforcement officer and who (i) attains age 50 and completes 15 or more years of creditable service in this capacity, or (ii) attains age 55 and completes five or more years of creditable service in this capacity, or (iii) who has completed 25 years of creditable service with a minimum of 15 years of creditable service in a law enforcement capacity may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, the member desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.

(a1) Early Service Retirement Benefits. – Any member may retire and receive a reduced retirement allowance upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(a2) Discontinued Service Retirement Allowance. – A member whose employment with a participating employer is involuntarily terminated as a result of a termination event as defined in this subsection may be allowed a discontinued service retirement allowance, provided that the discontinued service retirement allowance is approved by the terminated member's participating employer, and provided that reemployment with that participating employer is not available to the member at the time of the termination event. For purposes of this section, "termination event" means termination of employment as a result of (i) the participating employer's cessation of operations; (ii) the participating employer's dissolution; (iii) the merger of a participating employer with and into an unrelated entity, other than another participating employer; (iv) the acquisition of the participating employer by an unrelated entity, other than another participating employer; or (v) the determination by the participating employer that a reduction in force will accomplish economies in the participating employer's budget resulting from either the elimination of a job and its responsibilities or from lack of funds to support the job. Final action approving the discontinued service retirement allowance for a terminated member by the member's participating employer shall be taken in an open meeting.

Upon the occurrence of a termination event, and subject to the provisions of this subsection, an unreduced discontinued service retirement allowance, not otherwise allowed under this Chapter, may be approved for terminated members with 20 or more years of creditable service who are at least 55 years of age. Alternatively, upon the occurrence of a termination event, a discontinued service retirement allowance, not otherwise allowed under this Chapter, may be approved for terminated members with 20 or more years of creditable service who are at least 50 years of age, reduced by one-fourth of one percent ($\frac{1}{4}$ of 1%) for each month that retirement precedes the member's fifty-fifth birthday.

In cases in which a discontinued service retirement allowance is approved, the terminated member's employer shall be responsible for making a lump-sum payment to the Retirement System's Board of Trustees equal to the actuarial present value of the additional liabilities imposed upon the Retirement System, to be determined by the Retirement System's consulting actuary, as a result of the discontinued service retirement allowance, plus an administrative fee to be determined by the Board of Trustees. An employer shall not discriminate against any member or group of members employed by the employer in the approval or disapproval of a discontinued service retirement allowance.

(a3) Anti-Pension-Spiking Contribution-Based Benefit Cap. – Notwithstanding any other provision of this section, every service retirement allowance provided under this section for members who retire on or after January 1, 2015, is subject to adjustment pursuant to a contribution-based benefit cap under this subsection. The Board of Trustees

shall adopt a contribution-based benefit cap factor recommended by the actuary, based upon actual experience, such that no more than three-quarters of one percent (0.75%) of retirement allowances are expected to be capped. The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 128-28(o).

Prior to establishing a service retirement allowance under this section, the Board shall:

- (1) Determine an amount equal to the member's accumulated contributions as required under G.S. 128-30(b)(1) for all years during which the member earned membership service, other than service earned through armed service credit under G.S. 128-26(a1) or G.S. 128-26(j1), used in the calculation of the retirement allowance that the member would receive under this section.
- (2) Determine the amount of a single life annuity that is the actuarial equivalent of the amount determined under subdivision (1) of this subsection, adjusted for the age of the member at the time of retirement or, when appropriate, the age at the time of the member's death.
- (3) Multiply the annuity amount determined under subdivision (2) of this subsection by the contribution-based benefit cap factor.
- (4) Determine the amount of the retirement allowance that results from the member's membership service.

The product of the multiplication in subdivision (3) of this subsection is the member's contribution-based benefit cap. If the amount determined under subdivision (4) of this subsection exceeds the member's contribution-based benefit cap, the member's retirement allowance shall be reduced by an amount equal to the difference between the contribution-based benefit cap and the amount determined under subdivision (4) of this subsection.

Notwithstanding the foregoing, the retirement allowance of a member with an average final compensation of less than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall not be subject to the contribution-based benefit cap. The minimum average final compensation necessary for a retirement allowance to be subject to the contribution-based benefit cap shall be increased on January 1 each year by the percent change between the June Consumer Price Index in the year prior to retirement and the June Consumer Price Index in the fiscal year most recently ended, calculated to the nearest tenth of a percent (0.1%), provided that this percent change is positive.

Notwithstanding the foregoing, the retirement allowance of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the Retirement System after January 1, 2015, shall not be reduced; however, the member's last employer shall be required to make an additional contribution as specified in G.S. 128-30(g)(2)b., if applicable.

(b) Service Retirement Allowance of Persons Retiring on or after July 1, 1959, but prior to July 1, 1965. – Upon retirement from service on or after July 1, 1959, but prior to July 1, 1965, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

- (2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier, on the basis of contributions made prior to such earlier age; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of 65 years, or at the earlier age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the System been in operation and he contributed thereunder at the rate of
 - a. Six and twenty-five hundredths percent (6.25%) of his compensation if such certificate is a Class A certificate, or
 - b. Five percent (5%) of his compensation if such certificate is a Class B certificate, or
 - c. Four percent (4%) of his compensation if such certificate is a Class C certificate.

(b1) Service Retirement Allowances of Persons Retiring on or after July 1, 1965, but prior to July 1, 1967. – Upon retirement from service on or after July 1, 1965, but prior to July 1, 1967, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars (\$4,800) multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.
- (2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above but shall be reduced by five twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(b).

(b2) Service Retirement Allowances of Persons Retiring on or after July 1, 1967, but prior to July 1, 1969. – Upon retirement from service on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of five thousand

six hundred dollars (\$5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.

- (2a) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent (1/3 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provision, any member whose creditable service commenced prior to July 1, 1965, and policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b3) Service Retirement Allowances of Persons Retiring on or after July 1, 1969, but prior to July 1, 1973. – Upon retirement from service on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3a) If the member's service retirement date occurs before his sixty-second birthday but on or after his sixtieth birthday and on or after completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.
- (3b) If the member's service retirement date occurs before his sixtieth birthday but on or after completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (3a) above.

- (4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1976. – Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1976, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b5) Service Retirement Allowances of Members Retiring on or after July 1, 1976, but prior to July 1, 1978. – Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1976, but prior to July 1, 1978, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service

retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b6) Service Retirement Allowance of Members Retiring on or after July 1, 1978, but prior to July 1, 1983. – Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1978, but prior to July 1, 1983, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one-hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b7) Service Retirement Allowances of Members Retiring on or after July 1, 1983, but prior to July 1, 1985. – Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1983, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven one-hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his retirement

allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b8) Service Retirement Allowance of Law Enforcement Officers Retiring on or after January 1, 1986, but before July 1, 1988. – Upon retirement from service, in accordance with subsection (a) above, on or after January 1, 1986, but before July 1, 1988, a member who is a law enforcement officer or an eligible former law enforcement officer shall receive the following service retirement allowance:

- (1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (1/3 of 1%) for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. – Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

- (1) If the member's service retirement date occurs on or after his 65th birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. – Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent

(1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. Such allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty-hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b) and (3).

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. – Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. – Upon retirement from service in accordance with subsection (a)

above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1994. – Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1994, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th

birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.

- b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. – Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1995 but before July 1, 1997. – Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 128-27(b15)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 - 2. The service retirement allowance as computed under G.S. 128-27(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b15)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b15)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b16) Service Retirement Allowance of Member Retiring on or after July 1, 1997, but before July 1, 1998. – Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 1998, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 128-27(b16)(1)a., reduced by one-third of one percent (1/3 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the

allowance shall be equal to one and seventy-six hundredths percent (1.76%) of average final compensation, multiplied by the number of years of creditable service.

- b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b16)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 - 2. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 - 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b16)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b17) Service Retirement Allowance of Member Retiring on or After July 1, 1998, but before July 1, 2000. – Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1998, but before July 1, 2000, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-seven

- hundredths percent (1.77%) of his average final compensation, multiplied by the number of years of his creditable service.
- b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 128-27(b17)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-seven hundredths percent (1.77%) of average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b17)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes

the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b17)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b18) Service Retirement Allowance of Member Retiring on or After July 1, 2000, but Before July 1, 2001. – Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2001, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-eight hundredths percent (1.78%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 128-27(b18)(1)a. reduced by one-third of one percent (1/3 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;
 2. The service retirement allowance as computed under G.S. 128-27(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after

the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-eight hundredths percent (1.78%) of average final compensation, multiplied by the number of years of creditable service.

- b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b18)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance as computed under G.S. 128-27(b18)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 - 2. The service retirement allowance as computed under G.S. 128-27(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 - 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b18)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b19) Service Retirement Allowance of Member Retiring on or After July 1, 2001, But Before July 1, 2002. – Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2001, but before July 1, 2002, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law

enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 128-27(b19)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;
 - 2. The service retirement allowance as computed under G.S. 128-27(b19)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of average final compensation, multiplied by the number of years of creditable service.
- b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b19)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance as computed under G.S. 128-27(b19)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have

attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b19)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b19)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b20) Service Retirement Allowance of Member Retiring on or After July 1, 2002, but Before July 1, 2003. – Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2002, but before July 1, 2003, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 128-27(b20)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;
 2. The service retirement allowance as computed under G.S. 128-27(b20)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of average final compensation, multiplied by the number of years of creditable service.
- b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b20)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 128-27(b20)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b20)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b20)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b21) Service Retirement Allowance of Member Retiring on or After July 1, 2003, but Before July 1, 2019. – Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2003, but before July 1, 2019, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 128-27(b21)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;
 - 2. The service retirement allowance as computed under G.S. 128-27(b21)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b21)(2) a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance as computed under G.S. 128-27(b21)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his

retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b21)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b21)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b22) Service Retirement Allowance of Member Retiring on or After July 1, 2019. – Upon retirement from service in accordance with subsection (a) or (a1) of this section, on or after July 1, 2019, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after the member's 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of the member's average final compensation, multiplied by the number of years of the member's creditable service.
 - b. If the member's service retirement date occurs prior to the member's 50th birthday and after the completion of 25 years of creditable service with a minimum of 15 years of creditable service in a law enforcement capacity but before the completion of 30 years of creditable service, the retirement allowance shall be equal to the greater of the following amounts:
 1. The service retirement allowance payable under G.S. 128-27(b22)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which the member's retirement date precedes the first day of the month coincident with or next following the month the member would have attained age 55.
 2. The service retirement allowance as computed under G.S. 128-27(b22)(1)a. reduced by five percent (5%) times the difference between 30 years and the member's creditable service at retirement plus four percent (4%) times the difference between 50 and the member's age at retirement.

- c. If the member's service retirement date occurs on or after the member's 50th birthday and before the member's 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the retirement allowance shall be equal to the greater of the following amounts:
 - 1. The service retirement allowance payable under G.S. 128-27(b22)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following the month the member would have attained age 55.
 - 2. The service retirement allowance as computed under G.S. 128-27(b22)(1)a. reduced by five percent (5%) times the difference between 30 years and the amount of creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after the member's 65th birthday upon the completion of five years of creditable service, or after the completion of 30 years of creditable service, or on or after the member's 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of the member's average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after the member's 60th birthday and before the member's 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 128-27(b22)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following the member's 65th birthday.
 - c. If the member's early service retirement date occurs on or after the member's 50th birthday and before the member's 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, the early service retirement allowance shall be equal to the greater of the following amounts:
 - 1. The service retirement allowance as computed under G.S. 128-27(b22)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following the month the member would have attained the member's 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which the member's 60th birthday precedes the first day of the month coincident with or next following the member's 65th birthday.

2. The service retirement allowance as computed under G.S. 128-27(b22)(2)a. reduced by five percent (5%) times the difference between 30 years and the amount of creditable service at retirement.
3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b22)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(c) **Disability Retirement Benefits.** – Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 120 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection below. Provided further, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer, an eligible firefighter as defined in G.S. 58-86-2, or an eligible rescue squad worker as defined in G.S. 58-86-2, and becomes incapacitated for duty as the natural and proximate result of injuries incurred while in the actual performance of his or her duties, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement

benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, effective April 1, 1991, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) At the time of the member's death, one and only one beneficiary is eligible to receive a return of accumulated contributions, and
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) Allowance on Disability Retirement of Persons Retiring prior to July 1, 1965. – Upon retirement for disability, in accordance with subsection (c) above, prior to July 1, 1965, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;
- (2) A pension equal to seventy-five percent (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1965, but prior to July 1, 1969. – Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1965, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. – Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. – Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.
- (2) Notwithstanding the foregoing provisions,
 - a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 128-27(d2);
 - b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and
 - c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982. – Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired on Account of Disability. – Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60

years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the percentage change between the December Consumer Price Index in the year prior to retirement and the December Consumer Price Index in the year most recently ended, calculated to the nearest tenth of a percent (1/10 of 1%), provided that this percentage change is positive. Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

The provisions of this subdivision shall not apply to beneficiaries of the Law Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

- (2) Should a disability beneficiary under the age of 62 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute thereafter at the contribution rate which is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration

after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance prescribed in a below reduced by the amount in b below.
 - a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.
 - b. The actuarial equivalent of the retirement benefits he previously received.
- (3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.
- (4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 128-27(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 120 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 180 days after such request, the right of a beneficiary to a benefit under the Article may be terminated.

The Director of the State Retirement Systems shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.
- (5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries

last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee other than as a law enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this section. Any beneficiary as hereinbefore described who becomes employed as a law enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this section.

- (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 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.

(f) Return of Accumulated Contributions. – Should a member cease to be an employee except by death or retirement under the provisions of this Chapter, the member shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, the member's contributions and the accumulated regular interest thereon, provided that the member has not in the meantime returned to service. Upon payment of such sum his or her membership in the System shall cease and, if he or she thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 128-26; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as the member or former member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of

Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of the member's accumulated contributions at the time of the member's death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his or her accumulated contributions unless the extension service employee is eligible to be paid his or her accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

(f1) Notwithstanding the foregoing provisions, upon or after retirement any member who was a uniformed fireman and any surviving beneficiary of a member who was a uniformed fireman, shall upon submission of an application, be paid the sum of accumulated contributions, with regular interest thereon, made under those provisions of G.S. 128-30(b)(1) that applied from July 1, 1965, through June 30, 1971, to the extent of the contributions required of the member that were in excess of the contributions required of other members of the Local Governmental Employees' Retirement System covered under the Social Security Act as was from time to time in effect; provided that, the return of contributions shall be payable only if the contributions did not increase the retirement allowance of the member or surviving beneficiary under the provisions of this Chapter.

(f2) Expired.

(g) Election of Optional Allowance. – With the provision that until the first payment on account of any benefit becomes normally due, or the member's first retirement check has been cashed, any member may elect to receive his or her benefits in a retirement allowance payable throughout life, or the member may elect to receive the actuarial equivalent of such retirement allowance, including any special retirement allowance, in a reduced allowance payable throughout life under the provisions of one of the Options set forth below. The election of Option 2, 3, or 6 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or the member's first retirement check has been cashed. Provided, however, in the event a member has elected Option 2, 3, or 5 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees

within 120 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Option 2, 3, 5, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option. Except as provided in this section, the member may not change the member's retirement benefit option or the member's designated beneficiary for survivor benefits, if any, after the member has cashed the first retirement check or after the 25th day of the month following the month in which the first check is mailed, whichever comes first.

Option one.

- (a) In the Case of a Member Who Retires prior to July 1, 1965. – If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative.
- (b) In the Case of a Member Who Retires on or after July 1, 1965, but prior to July 1, 1993. – If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one one-hundred-twentieth thereof for each month for which he has received a retirement allowance payment, shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowance for Social Security Benefits. – Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, effective as of the first of the month following the month of initial entitlement, upon application therefor, to receive a social security benefit.

Option five. For Members Retiring prior to July 1, 1993. – The member may elect to receive a reduced retirement allowance under the conditions of Option two or Option three, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option six. A member may elect either Option two or Option three with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

Upon the death of a member after the effective date of a retirement for which the member has been approved and following receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E) but prior to the cashing of the first benefit check, the retirement benefit shall be payable as provided by the member's election of benefits under this subsection.

Upon the death of a member after the effective date of a retirement for which the member has been approved but prior to the receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E), properly acknowledged and filed by the member, the member's designated beneficiary for a return of accumulated contributions may elect to receive the benefit, if only one beneficiary is eligible to receive the return of accumulated contributions. If more than one beneficiary is eligible to receive the return of accumulated contributions, or if no beneficiary has been designated, the administrator or executor of the member's estate will select an option and name the beneficiary or beneficiaries.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. In the event that a retiree is receiving a Special Retirement Allowance under subsection (m1) of this section, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System over the total of the Special Retirement Allowances paid prior to the death of the retiree. For

purposes of this paragraph, the term "accumulated contributions" excludes any amount transferred under subsection (m2) of this section.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 128-26, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above, and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or

persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate.

(h) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of Chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the Board of Trustees may adopt, the provisions of Chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments.

(i) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made. This subsection does not affect the right of the Retirement System to recoup overpaid benefits as provided in G.S. 128-31.

(j) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. – From and after July 1, 1967, the monthly benefits, to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

| Period in Which Benefits Commenced | Percentage |
|------------------------------------|------------|
| January 1, 1966, to June 30, 1967 | 5% |
| Year 1965 | 6% |
| Year 1964 | 7% |
| Year 1963 | 8% |
| Year 1962 | 9% |
| Year 1961 | 10% |
| Year 1960 | 11% |
| Year 1959 | 12% |
| Year 1958 | 13% |
| Year 1957 | 14% |
| Year 1956 | 15% |
| Year 1955 | 16% |
| Year 1954 | 17% |
| Year 1953 | 18% |
| Year 1952 | 19% |

| | |
|-----------|-----|
| Year 1951 | 20% |
| Year 1950 | 21% |
| Year 1949 | 22% |
| Year 1948 | 23% |
| Year 1947 | 24% |
| Year 1946 | 25% |

The minimum increase pursuant to this subsection (j) shall be five dollars (\$5.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to a retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(k) Post-Retirement Increases in Allowances. – As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971, as follows:

| <i>Increase In Index</i> | <i>Increase In Allowance</i> |
|------------------------------|----------------------------------|
| <i>1.00 to 1.49%</i> | <i>1%</i> |
| <i>1.50 to 2.49%</i> | <i>2%</i> |
| <i>2.50 to 3.49%</i> | <i>3%</i> |
| <i>3.50% or more</i> | <i>4%</i> |

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum (1/10 of 1%), but not more than four per centum (4%); provided that any such increase in allowances shall be contingent upon the total fund providing sufficient investment gains to cover the additional actuarial liabilities on account of such increase. The determination of whether there are sufficient investment gains to cover the possible postretirement increase in allowance shall reside exclusively within the discretion of the Board of Trustees and shall be informed by the findings within the annual actuarial valuation reports. In considering whether to grant a postretirement increase, the Board of Trustees shall take into account both the rate of inflation as determined by the Consumer Price Index and the record of investment gains or losses during the preceding three-year period.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

Notwithstanding the foregoing linkage between increases in the Consumer Price Index and correlative contingent increases in retirement benefits determined by the availability of sufficient investment gains to cover the additional actuarial liabilities arising from those increased benefits, the Board of Trustees, may in any year, considering an increase, if any, in the Consumer Price Index, fund a cost-of-living increase in a percentage amount, measured in tenths of one percent (1/10 of 1%), of up to four percent (4%), provided that the Board may use only investment gains to fund such an increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items – United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

(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.

Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

- (2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2; subject to a minimum of twenty-five thousand dollars (\$25,000) and a maximum of fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After June 30, 1969 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; or
- (7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained age 65, and otherwise met all conditions for payment of the death benefit.

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 fund qualified under section 501(c)(9) of the Internal Revenue Code of 1954, as amended, 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. 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 has been terminated, the last day the member actually worked.
 - b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire.
 - c. When a participant's employment 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.
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 128-26(g).
- (4) A member on leave of absence from his position as a local governmental employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit, if applicable. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a local governmental employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars (\$25,000) nor to exceed fifty thousand dollars (\$50,000).

The provisions of the Retirement System pertaining to administration, G.S. 128-28, and management of funds, G.S. 128-29, are hereby made applicable to the Plan.

(1) Death Benefit Plan for Law Enforcement Officers. – Under all requirements and conditions as otherwise provided for in subsection (l), except for the requirement that the provisions are effective only after an agreement has been executed by the employer and the Director of the Retirement System, all law enforcement officers who are members of the Retirement System shall participate and be eligible for group life insurance benefits under the Plan, and employers shall fund the cost of these benefits.

(2) Death Benefit for Retired Members. – Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of 24 months of

contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(13) **Death Benefit for Retired Members.** – Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump sum payment in the amount of six thousand dollars (\$6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(14) **Death Benefit for Retired Members.** – Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars (\$9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(15) Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2007, but before January 1, 2015, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when

first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(l6) Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 2015, there shall be paid a death benefit to the person or persons designated by the member or, if the member has not designated a beneficiary, to the surviving spouse of the deceased retired member or, if not survived by a designated beneficiary or spouse, to the deceased retired member's legal representative; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of the member's death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund, the North Carolina Teachers' and State Employees' Benefit Trust, administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. 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.

The death benefit payable under this subsection shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's designated beneficiary or beneficiaries, or surviving spouse if not survived by a designated beneficiary, or legal representative if not survived by a designated beneficiary or spouse, shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(m) Survivor's Alternate Benefit. – Upon the death of a member in service, the beneficiary designated to receive a return of accumulated contributions shall have the right

to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of the member's death, provided that all four of the following conditions apply:

- (1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b22)(1)c. or G.S. 128-27(b22)(2)c., notwithstanding the requirement of obtaining age 50, or
- b1. The member was a law enforcement officer who had obtained 15 years of service as a law enforcement officer and was killed in the line of duty, or the member was a firefighter or a rescue squad worker who had obtained 15 years of service as a firefighter or a rescue squad worker and was killed in the line of duty, in which cases the retirement allowance shall be computed in accordance with G.S. 128-27(b22)(1)c., notwithstanding the requirement of obtaining age 50.
- c. Repealed by Session Laws 2010-72, s. 2(b), effective July 1, 2010.
- (2) At the time of the member's death, one and only one beneficiary is eligible to receive a return of his accumulated contributions.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.
- (4) The member had not commenced to receive a retirement allowance as provided under this Chapter.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase.

For the purpose of calculating this benefit, any terminal payouts made after the date of death that meet the definition of compensation shall be credited to the month prior to the month of death. These terminal payouts do not include salary or wages paid for work performed during the month of death.

(m1) Special Retirement Allowance for Law Enforcement Officers. – Upon retirement, a member who is a law enforcement officer vested as of June 30, 2010, may elect to transfer any portion of his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina to this Retirement System and receive, in addition to his basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon his eligible accumulated account balance at the date of the transfer of the assets to this System. For the purpose of determining the special retirement allowance,

the Board of Trustees shall adopt straight life annuity factors on the basis of mortality tables, such other tables as may be necessary and the interest assumption rate recommended by the actuary based upon actual experience including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five year experience study as required by G.S. 128-28(o). Provided, however, a member who transfers his eligible accumulated contributions from the Supplemental Retirement Income Plan of North Carolina shall be taxed for North Carolina State Income tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina. The Local Governmental Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

(m2) Special Retirement Allowance. – At any time coincident with or following retirement, a member may make a one-time, irrevocable election to transfer any portion of the member's eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System and receive, in addition to the member's basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon the member's transferred balance.

A member who became a member of the Supplemental Retirement Income Plan prior to retirement and who remains a member of the Supplemental Retirement Income Plan may make a one-time, irrevocable election to transfer eligible balances, not including any Roth after-tax contributions and the earnings thereon, from any of the following plans to the Supplemental Retirement Income Plan, subject to the applicable requirements of the Supplemental Retirement Income Plan, and then through the Supplemental Retirement Income Plan to this Retirement System (i) a plan participating in the North Carolina Public School Teachers' and Professional Educators' Investment Plan; (ii) a plan described in section 403(b) of the Internal Revenue Code; (iii) a plan described in section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; (iv) an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income; or (v) a tax-qualified plan described in section 401(a) or section 403(a) of the Internal Revenue Code. In addition, any transfer under this subsection may be paid in whole or in part with employer contributions paid directly to this Retirement System at the time of transfer.

Notwithstanding anything to the contrary, a member may not transfer such amounts as will cause the member's retirement allowance under the System to exceed the amount allowable under G.S. 128-38.2(b). The Board of Trustees may establish a minimum amount that must be transferred if a transfer is elected. The member may elect a special retirement allowance with no postretirement increases or a special retirement allowance with annual postretirement increases equal to the annual increase in the U.S. Consumer

Price Index. Postretirement increases on any other allowance will not apply to the special retirement allowance. The Board of Trustees shall provide educational materials to the members who apply for the transfer authorized by this section. Those materials shall describe the special retirement allowance and shall explain the relationship between the transferred balance and the monthly benefit and how the member's heirs may be impacted by the election to make this transfer and any costs and fees involved.

For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality and such other tables as may be necessary based upon actual experience. A single set of mortality and such other tables will be used for all members, with factors differing only based on the age of the member and the election of postretirement increases. The Board of Trustees shall modify the mortality and such other tables every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 128-28(o). Provided, however, a member who transfers the member's eligible accumulated contributions from an eligible retirement plan pursuant to this subsection to this Retirement System shall be taxed for North Carolina State Income Tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the eligible plan or the plan through which the transfer was made, whichever is most favorable to the member. The Local Governmental Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

The special retirement allowance shall continue for the life of the member and the beneficiary designated to receive a monthly survivorship benefit under Option 2, 3 or 6 as provided in G.S. 128-27(g), if any. The Board of Trustees, however, shall establish two payment options that guarantee payments as follows:

- (1) A member may elect to receive the special retirement allowance for life but with payments guaranteed for a number of months to be specified by the Board of Trustees. Under this plan, if the member dies before the expiration of the specified number of months, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary will receive the benefit only for the remainder of the specified number of months. If the member's designated beneficiary dies before receiving payments for the specified number of months, any remaining payments will be paid to the member's estate.
- (2) A member may elect to receive the special retirement allowance for life but is guaranteed that the sum of the special allowance payments will equal the total of the transferred amount. Under this payment option, if the member dies before receiving the total transferred amount, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary or the member's estate shall be paid any remaining balance of the transferred amount.

The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess a one-time flat administrative fee not to exceed the actual cost of the administrative expenses relating to these transfers. An eligible plan shall not assess a fee specifically relating to a transfer of accumulated contributions authorized under this subsection. This provision shall not prohibit other fees that may be assessable under the plan. Each plan, contract, account, or annuity shall fully disclose to any member participating in a transfer under this subsection any surrender charges or other fees, and that disclosure shall be made contemporaneous with the initiation of the transfer by the member.

The General Assembly reserves the right to repeal or amend this subsection, but such repeal or amendment shall not affect any person who has already made the one-time election provided in this subsection.

(m3) A member who has contributions in this System and is not eligible for a retirement benefit as set forth in G.S. 128-27(a) or G.S. 128-27(a1) shall be paid his or her contributions in a lump sum as provided in G.S. 128-27(f) by April 1 of the calendar year following the later of the calendar year in which the member (i) attains 72 years of age or (ii) has ceased to be an employee except by death. If the member fails, following reasonable notification, to complete a refund application by the required date, then the requirement that a refund application be completed shall be waived and the refund shall be paid without a refund application as a single lump-sum payment with applicable required North Carolina and federal income taxes withheld.

A member who has contributions in this System and is eligible for a retirement benefit as set forth in G.S. 128-27(a) or G.S. 128-27(a1) shall begin to receive a monthly benefit no later than April 1 of the calendar year following the later of the calendar year in which the member (i) attains 72 years of age or (ii) has ceased to be an employee except by death. If the member fails, following reasonable notification, to complete the retirement process as set forth under Chapter 128 of the General Statutes by the required beginning date, then the requirement that a retirement application and an election of payment plan form be completed shall be waived and the retirement allowance shall be paid as a single life annuity. The single life annuity shall be calculated and processed in accordance with this section.

For purposes of this subsection, a member shall not be considered to have ceased to be an employee if the member is actively contributing to the Teachers' and State Employees' Retirement System, Consolidated Judicial Retirement System, or Legislative Retirement System. A retirement benefit or lump-sum refund shall not be paid under this subsection if the member is actively contributing to the Teachers' and State Employees' Retirement System, Consolidated Judicial Retirement System, or Legislative Retirement System.

(n) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. – From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1965, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1965 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971 have been increased to the extent provided for in subsection (k) above.

(o) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1969. – From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1969, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

| <i>Year(s) in Which Benefits Commenced</i> | <i>Percentage</i> |
|--|-------------------|
| <i>1959 through 1968</i> | <i>10</i> |
| <i>1946 through 1958</i> | <i>25</i> |

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (k).

(p) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. – From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (k).

(q) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(r) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(s) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 128-27(k) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(t) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. – From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(u) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2 ½%) for the year beginning July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(v) Increases in Allowances Paid Beneficiaries Retired prior to July 1, 1976. – From and after July 1, 1978, the monthly allowances paid to or on account of beneficiaries who commenced receiving such allowances prior to July 1, 1976, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly allowances, as of July 1, 1978, have been increased to the extent provided for in the preceding subsections (k) and (u). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 128-27(k), shall be five percent (5%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(x) Increases in Benefits to Those Persons Who Were Retired prior to July 1, 1978. – From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1978, shall be increased by a percentage in accordance with the following schedule:

| <i>Period in Which Benefits Commenced</i> | <i>Percentage</i> |
|---|-------------------|
| <i>On or before June 30, 1959</i> | <i>10%</i> |
| <i>July 1, 1959, to June 30, 1968</i> | <i>7%</i> |
| <i>July 1, 1968, to June 30, 1978</i> | <i>2%</i> |

This increase shall be calculated independent of any other post-retirement increase, without compounding, otherwise payable from and after July 1, 1980.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1980, which shall become payable on January 1, 1982, as otherwise provided in G.S. 128-27(h), shall be the percentage available therefrom plus an additional six and six-tenths percent (6.6%); provided that in no case shall the increase exceed a total of seven percent (7%). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of the beneficiary.

(z) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary as of July 1, 1983, which shall become payable on July 1, 1984, shall be three and eight-tenths percent (3.8%) as provided in G.S. 128-27(k) plus an additional four and two-tenths percent (4.2%) to a total of eight percent (8%). The provision of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(z1) Notwithstanding the foregoing provisions, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(aa) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable on allowances in effect on June 30, 1985.

(bb) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(cc) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(dd) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and

six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(ee) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. – From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(ff) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(gg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. – From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(hh) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. – From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ii) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(jj) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992. – From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(kk) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(ll) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(mm) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. – From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1993 General Assembly in 1994.

(nn) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by two and eight-tenths percent (2.8%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of two and eight-tenths percent (2.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(oo) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased

by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(pp) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. – From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1995 General Assembly.

(qq) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by seven-tenths of one percent (0.7%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of seven-tenths of one percent (0.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(rr) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 128-27(k). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ss) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(tt) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997. – From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the

allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly.

(uu) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(vv) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1998. – From and after July 1, 1998, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1998, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1998. This allowance shall be calculated on the allowance payable and in effect on June 30, 1998, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly.

(ww) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by one percent (1.0%) of the allowance payable on June 1, 1999, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of one percent (1.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(xx) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2000. – From and after July 1, 2000, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2000, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1999 General Assembly, 2000 Regular Session.

(yy) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on June 1, 2000, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board

of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(zz) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(aaa) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2001. – From and after July 1, 2001, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2001, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2001. This allowance shall be calculated on the allowance payable and in effect on June 30, 2001, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2001 General Assembly.

(bbb) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(ccc) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002. – From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2002 Regular Session of the 2001 General Assembly.

(ddd) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by two percent (2.0%) of the allowance payable on June 1, 2003, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of two percent (2.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(eee) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before June 1, 1982, shall be increased by six percent (6.0%) of the allowance payable on June 1, 2003, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or after July 1, 1982, but before July 1, 1993, shall be increased by one and one-tenth percent (1.1%) of the allowance payable on June 1, 2003, in accordance with subsection (k) of this section. This allowance shall be calculated on the allowance payable and in effect on June 30, 2003, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2003 Regular Session of the 2003 General Assembly.

(fff) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2003. – From and after July 1, 2003, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2003, shall be increased by one and one-half percent (1.5%) of the allowance payable on June 1, 2003. This allowance shall be calculated on the allowance payable and in effect on June 30, 2003, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2003 General Assembly.

(ggg) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 2005, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128; 1977, 2nd Sess., c. 1240; 1979, c. 862, ss. 2, 6, 7; c. 974, s. 1; c. 1063, s. 2; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; c. 975, s. 2; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1284, ss. 1, 2; 1983, c. 467; c. 761, ss. 226, 227; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1044; c. 1049, ss. 1-3; c. 1086; 1985, c. 138; c. 348, s. 2; c. 479, s. 196(i)-(n); c. 520, s. 2; c. 649, ss. 8, 10; c. 751, ss. 1-4, 6; c. 791, s. 56; 1985 (Reg. Sess., 1986), c. 1014, s. 49(d); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(c), 37(b); c. 824, s. 2; 1987 (Reg. Sess., 1988), c. 1061, s. 2; c. 1086, s. 22(c); c. 1108, s. 3; c. 1110, ss. 4-7; 1989, c. 717, ss. 13, 13.1; c. 731, s. 2; c. 752, s. 41(c); c. 792, ss. 3.4-3.6; 1989 (Reg. Sess., 1990), c. 1077, ss. 13-16; c. 1080; 1991, c. 636, s. 20(a); 1991 (Reg. Sess., 1992), c. 766, s. 1; c. 900, ss. 52(e)-(g), 53(a); c. 929, s. 1; c. 1030, s. 51.1; 1993, c. 321, ss. 74(b), 74.1(c), (d); c. 531, s. 3; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(b)-(d), (l); 1995, c. 507, ss. 7.22(e), (f), 7.23(c), (d), 7.23A(c); 1996, 2nd Ex. Sess.,

c. 18, s. 28.21(d); 1997-443, s. 33.22(g)-(j); 1998-153, s. 21(d)-(h); 1998-212, ss. 28.26(b), 28.27(e), (f); 1999-237, s. 28.23(d); 2000-67, ss. 26.20(g)-(j); 2001-424, ss. 32.22(d), 32.23(a)-(d); 2001-435, s. 1; 2002-126, ss. 28.8(b), 28.9(e)-(h); 2003-319, ss. 1-4; 2003-359, ss. 15, 16, 21; 2004-136, s. 1; 2004-147, ss. 2, 3; 2005-91, ss. 9, 10; 2005-276, s. 29.25(d); 2007-384, ss. 10.1, 10.2; 2007-431, ss. 2, 6; 2007-496, s. 2; 2009-66, ss. 3(i)-(k), 5(d)-(f), 6(b), 11(h)-(j), 12(g), (h); 2009-109, s. 2; 2010-72, ss. 1(b), 2(b), 9(b), 10(b); 2010-96, s. 40.7; 2010-124, ss. 4-6, 6.1(a), (b); 2011-92, s. 2; 2011-294, s. 3(b); 2011-371, s. 1; 2012-82, s. 1; 2012-178, s. 2; 2014-88, ss. 1(b), 2(b); 2014-97, ss. 3(b), 4(g), 5(b); 2014-112, ss. 1(b), 3(e), 3(f), 7; 2015-164, s. 10(b); 2016-56, ss. 4(b), 5(b); 2017-129, ss. 1(c), 2(r), 2(s), 3(d), 3(e); 2018-22, ss. 2(b), 3(e)-(h); 2018-85, ss. 2, 3(b), 11(b); 2018-145, s. 9(c), (d); 2020-48, s. 1.2(b).)

§ 128-28. Administration and responsibility for operation of System.

(a) Vested in Board of Trustees. – The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of this Article are hereby vested in the Board of Trustees: Provided, that all expenses in connection with the administration of the North Carolina Local Governmental Employees' Retirement System shall be charged against and paid from the expense fund as provided in subsection (f) of G.S. 128-30.

(b) Board of Trustees a Body Politic and Corporate; Powers and Authority; Exemption from Taxation. – The Board of Trustees shall be a body politic and corporate under the name Board of Trustees of the North Carolina Local Governmental Employees' Retirement System, and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, and shall not be subject to income taxes.

(c) Members of Board. – The Board shall consist of (i) five members of the Board of Trustees of the Teachers' and State Employees' Retirement System appointed under G.S. 135-6(b): the State Treasurer; the Superintendent of Public Instruction; the two members appointed by the General Assembly; and one of the two members appointed by the Governor who are not members of the teaching profession or State employees; and (ii) eight members designated by the Governor:

- (1) One member shall be a mayor or a member of the governing body of a city or town participating in the Retirement System;
- (2) One member shall be a county commissioner of a county participating in the Retirement System;
- (3) One member shall be a law-enforcement officer employed by an employer participating in the Retirement System;
- (4) One member shall be a county manager of a county participating in the Retirement System;

- (5) One member shall be a city or town manager of a city or town participating in the Retirement System;
- (6) One member shall be an active, Fair Labor Standards Act nonexempt, local governmental employee of an employer;
- (7) One member shall be a retired, Fair Labor Standards Act nonexempt, local governmental employee of an employer; and
- (8) One member shall be an active or retired member of the Firemen's and Rescue Squad Workers' Pension Fund.

The Governor shall designate eight members on April 1 of years in which an election is held for the office of Governor, or as soon thereafter as possible, and the eight members designated by the Governor shall serve on the Board in addition to the regular duties of their city, town, or county office: Provided, that if for any reason any member appointed pursuant to subdivisions (1) through (6) of this subsection vacates the city, town, or county office or employment which the member held at the time of this designation, the Governor shall designate another member to serve until the next regular date for the designation of members to serve on the Board.

(d) Compensation of Trustees. – The trustees shall be paid during sessions of the Board at the prevailing rate established for members of State boards and commissions, and they shall be reimbursed for all necessary expenses that they incur through service on the Board.

(e) Oath. – Each trustee other than the ex officio members shall, within 10 days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State: Provided, that where a local governmental official designated by the Governor has taken an oath of office in connection with the local governmental office that he holds, the oath for his local governmental office shall be deemed to be sufficient, and he shall not be required to take the oath hereinabove provided.

(f) Voting Rights. – Each trustee shall be entitled to one vote in the Board. A majority of affirmative votes in attendance shall be necessary for a decision by the trustees at any meeting of said Board. A vote may only be taken if at least seven members of the Board are in attendance, in person or by telephone, for the meeting at which a vote on a decision is taken.

(f1) Effect of Vote Related to Contributory Death Benefit. – No decision of the Board related to the Contributory Death Benefit provided for under this Article shall take effect unless and until this same decision has been made and voted on by the Board of Trustees of the Teachers' and State Employees' Retirement System.

(g) Rules and Regulations. – Subject to the limitations of this Article, the Board of Trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this Article and for the transaction of its business. The Board of Trustees shall also, from time to time, in its discretion, adopt rules and regulations to

prevent injustices and inequalities which might otherwise arise in the administration of this Article.

(h) Officers and Other Employees, Salaries and Expenses. – The State Treasurer shall be ex officio chair of the Board of Trustees and shall appoint a director. The Board of Trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the Board of Trustees shall approve.

(i) Actuarial Data. – The Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System, and for checking the experience of the System.

(j) Record of Proceedings; Annual Report. – The Board of Trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System. It shall also publish annually a report on supplemental insurance offerings that are made available to retirees and the extent to which retirees participate in those offerings.

(k) Legal Adviser. – The Attorney General shall be the legal adviser of the Board of Trustees.

(l) Medical Board. – The Board of Trustees shall designate a Medical Board to be composed of not less than three nor more than five physicians not eligible to participate in the Retirement System. The Board of Trustees may structure appointment requirements and term durations for those medical board members. If required, other physicians may be employed to report on special cases. The Medical Board shall arrange for and pass upon all medical examinations required under the provisions of this Chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusion and recommendations upon all the matters referred to it. A person serving on the medical board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

- (1) The person was not acting within the scope of that person's official duties.
- (2) The person was not acting in good faith.
- (3) The person committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The person derived an improper financial benefit, either directly or indirectly, from the transaction.
- (5) The person incurred the liability from the operation of a motor vehicle.

(m) Duties of Actuary. – The Board of Trustees shall designate an actuary who shall be the technical adviser of the Board of Trustees on matters regarding the operation of the

funds created by the provisions of this Chapter and shall perform such other duties as are required in connection therewith. The experience studies and all other actuarial calculations required by this Chapter, and all the assumptions used by the System's actuary, including mortality tables, interest rates, annuity factors, the contribution-based benefit cap factor, and employer contribution rates, shall be set out in the actuary's periodic reports, annual valuations of System assets, or other materials provided to the Board of Trustees. Notwithstanding Article 2A of Chapter 150B of the General Statutes, these materials, once accepted by the Board, shall be considered part of the Plan documentation governing this Retirement System and shall be effective the first day of the month following adoption unless a different date is specified in the adopting resolution. The effective date shall not retroactively affect a contribution rate. The Board's minutes relative to all actuarial assumptions used by the System shall also be considered part of the Plan documentation governing this Retirement System, with the result of precluding any employer discretion in the determination of benefits payable hereunder, consistent with Section 401(a)(25) of the Internal Revenue Code.

(n) Immediately after the establishment of the Retirement System the actuary shall make such investigation of the mortality, service and compensation experience of the members of the System as he shall recommend and the Board of Trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the Board of Trustees such tables and such rates as are required in subsection (o), paragraphs (1) and (2), of this section. The Board of Trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this Chapter.

(o) In the year 1945, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System and shall make a valuation of the assets and liabilities of the funds of the System. Taking into account the result of such investigation and valuation, the Board of Trustees shall do all of the following:

- (1) Adopt any necessary mortality, service, or other tables and any necessary contribution-based benefit cap factors for the Retirement System.
- (2) Certify the rates of contributions payable by the participating units on account of new entrants at various ages.

In order to pay for the administration of this section, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the Retirement System or may pay the costs directly from the retirement assets.

(p) On the basis of the tables and interest assumption rate as adopted by the Board of Trustees, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this Chapter. The annual valuation shall include a supplementary section that provides an analysis of assets on a market basis using the 30-year treasury rate as of December 31 of the year of the valuation as the discount rate. In order to pay for the administration of this section, the Retirement Systems Division of the

Department of State Treasurer may increase receipts from the retirement assets of the Retirement System or may pay the costs directly from the retirement assets.

(q) Notwithstanding any law, rule, regulation or policy to the contrary, any board, agency, department, institution or subdivision of the State maintaining lists of names and addresses in the administration of their programs may upon request provide to the Retirement System information limited to social security numbers, current name and addresses of persons identified by the System as members, beneficiaries, and beneficiaries of members of the System. The System shall use such information for the sole purpose of notifying members, beneficiaries, and beneficiaries of members of their rights to and accruals of benefits in the Retirement System. Any social security number, current name and address so obtained and any information concluded therefrom and the source thereof shall be treated as confidential and shall not be divulged by any employee of the Retirement System or of the Department of State Treasurer except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the Retirement System. Any person, officer, employee or former employee violating this provision shall be guilty of a Class 1 misdemeanor; and if such offending person be a public official or employee, he shall be dismissed from office or employment and shall not hold any public office or employment in this State for a period of five years thereafter.

(r) Fraud Investigations and Compliance Investigations. – Access to Persons and Records. – In the course of conducting a fraud investigation or compliance investigation, the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall:

- (1) Have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any employer. The review of State tax returns shall be limited to matters of official business, and the Division's report shall not violate the confidentiality provisions of tax laws.
- (2) Have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation that is in the possession of any individual, private corporation, institution, association, board, or other organization which pertain to the following:
 - a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.
 - b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State.
- (3) Have the authority, and shall be provided with ready access, to examine and inspect all property, equipment, and facilities in the possession of any employer agency or any individual, private corporation, institution, association, board, or other organization that were furnished or otherwise provided through grant, contract, or any other type of funding by the employer agency.

With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of social and medical services to a beneficiary shall make copies of records they maintain for services provided to a beneficiary available to the Retirement Systems Division, or to the authorized representatives who are assisting the Retirement Systems Division staff.

Copies of the records of social and medical services provided to a beneficiary will permit verification of the health or other status of a beneficiary as required for the payment of benefits under Article 3 of this Chapter. The Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall request records in writing by providing the name of each beneficiary for whom records are sought, the purpose of the request, the statutory authority for the request, and a reasonable period of time for the production of record copies by the provider. A provider may charge, and the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the records provided in accordance with this subsection.

(s) **Fraud Investigative Reports and Work Papers or Compliance Investigative Reports and Work Papers.** – The Director of the Retirement Systems Division shall maintain for 10 years a complete file of all fraud investigative reports, compliance investigative reports, and reports of other examinations, investigations, surveys, and reviews issued under the Director's authority. Fraud investigation work papers, compliance investigation work papers, and other evidence or related supportive material directly pertaining to the work of the Retirement Systems Division of the Department of State Treasurer shall be retained according to an agreement between the Director of Retirement and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of fraud or compliance investigative effort, and notwithstanding local unit personnel policies to the contrary, pertinent work papers and other supportive material relating to issued fraud investigation reports or compliance investigative reports may be, at the discretion of the Director of Retirement and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations. Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, fraud or compliance investigation work papers and related supportive material shall be kept confidential, including any information developed as a part of the investigation.

(t) **Fraud Reports May Be Anonymous.** – The identity of any person reporting fraud, waste, and abuse to the Retirement Systems Division shall be kept confidential and shall not be maintained as a public record within the meaning of G.S. 132-1.

(u) **Immunity.** – A person serving on the Local Governmental Employees' Retirement System Board of Trustees shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

- (1) The person was not acting within the scope of that person's official duties.
- (2) The person was not acting in good faith.
- (3) The person committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The person derived an improper personal financial benefit, either directly or indirectly, from the transaction.

- (5) The person incurred the liability from the operation of a motor vehicle. (1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7; 1961, c. 515, ss. 3, 4; 1965, c. 781; 1969, c. 442, s. 15; 1973, c. 243, s. 8; 1985, c. 479, s. 196(o); 1987, c. 539, s. 1; 1993, c. 539, s. 944; 1994, Ex. Sess., c. 24, s. 14(c); 2006-64, ss. 1.1, 1.2; 2012-130, ss. 2(a), 9(a); 2012-185, ss. 2(c), 4(a); 2013-287, s. 4(b); 2014-112, ss. 4(b), 6(b); 2016-108, s. 6(d), (e); 2017-128, s. 1(h); 2018-85, s. 12; 2020-29, s. 2(b); 2020-48, ss. 4.1(b), 4.2(c), (d).)

§ 128-29. Management of funds.

(a) Vested in Board of Trustees. – The Board of Trustees shall be the trustee of the several funds created by this Article as provided in G.S. 128-30.

(b) Annual Allowance of Regular Interest. – The Board of Trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the Board of Trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean interest at the rate of four per centum (4%) per annum with respect to all calculations and allowances on account of members' contributions and at the rate of three per centum (3%) per annum with respect to employers' contributions, with the right reserved to the Board of Trustees to set a different rate or rates from time to time.

(c) Custodian of Funds. – The State Treasurer shall be the custodian of the several funds and shall invest their assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the Board of Trustees. The secretary of the Board of Trustees shall furnish said Board a surety bond in a company authorized to do business in North Carolina in such amount as shall be required by the Board, the premium to be paid from the expense fund.

(d) Cash Deposits for Meeting Disbursements. – For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum (10%) of the total amount in the several funds of the Retirement System, on deposit in one or more banks or trust companies of the State of North Carolina, organized under the laws of the State of North Carolina, or of the United States: Provided, that the sum on deposit in any one bank or trust company shall not exceed twenty-five per centum (25%) of the paid up capital and surplus of such bank or trust company.

(e) Selection of Depositories. – The Board of Trustees shall select a bank or banks for the deposits of the funds and securities of the Retirement System in the same manner as such banks are selected by the Treasurer of the State of North Carolina. Such banks selected shall be required to conform to the law governing banks selected by the State. The

funds and properties of the North Carolina Governmental Employees' Retirement System held in any bank of the State shall be safeguarded by a fidelity and surety bond, the amount to be determined by the Board of Trustees.

(f) Immunity of Funds. – Except as otherwise herein provided, no trustee and no employee of the Board of Trustees shall have any direct interest in the gains or profits of any investment made by the Board of Trustees, nor as such receive any pay or emolument for this service. No trustee or employee of the Board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the Board of Trustees; nor shall any trustee or employee of the Board of Trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the Board of Trustees.

(g) Legislative Enactment Implementation Arrangement. – The Legislative Enactment Implementation Arrangement (LEIA) is established effective October 1, 2017, and placed under the management of the Board of Trustees. The purpose of the LEIA is to provide for timely administrative implementation of legislative provisions regarding the retirement of, or payment of retirement benefits to, public officers or public employees. The LEIA shall have the following parameters:

- (1) Administration. – The LEIA shall be administered by the Board of Trustees, which shall compile and maintain all records necessary or appropriate for administration. The Board of Trustees shall have full discretionary authority to interpret, construe, and implement the LEIA and to adopt such rules and regulations as may be necessary or desirable to implement the provisions of the LEIA.
- (2) Funding of the LEIA. – In the event that the General Assembly creates or modifies any provision for the retirement of, or payment of retirement benefits to, public officers or public employees that has a cost savings as measured by actuarial note required by Article 15 of Chapter 120 of the General Statutes, the Board of Trustees may direct up to one hundredth percent (0.01%) of the required contributions to fund the LEIA. These funds must be deposited in a separate fund from the fund into which regular employer contributions are deposited for the Retirement System. The Board of Trustees shall not direct any employer contributions into the LEIA after November 1, 2026.
- (3) Allocation of LEIA funds. – The Board of Trustees may allocate LEIA funds to the implementation of legislative provisions regarding the retirement of, or payment for retirement benefits to, public officers or public employees, subject to the following restrictions:
 - a. The Board of Trustees must identify individual implementation projects that will be paid for with LEIA funds. These implementation projects must be necessitated by a specific statute or session law that was enacted within five years of the allocation of the funds. The Board of Trustees must also identify the number of years for which each individual implementation project will be paid for with LEIA funds.
 - b. For implementation projects that will be paid for with LEIA funds for a period of one year or less, the Board of Trustees must determine that the cost savings from implementing the project is projected to be no less

- than half of the amount of LEIA funds utilized to pay for implementation.
- c. For implementation projects that will be paid for with LEIA funds for a period of greater than one year, but not more than four years, the Board of Trustees must determine that the long-term cost savings from implementing the project is projected to be at least three times greater than the cost of implementation.
 - d. No implementation project shall be paid for with LEIA funds for a period of more than four years.
- (4) Treatment of unused assets. – Any assets of the LEIA not used to pay allowed administrative expenses for timely administrative implementation of legislative provisions shall be transferred to the Retirement System as an additional employer contribution.
 - (5) Reporting. – The Department of State Treasurer shall report to the Board of Trustees, the Joint Legislative Commission on Government Operations, and the Fiscal Research Division on or before August 1 of each year on the (i) amounts and sources of funds collected by year pursuant to this section and (ii) the amounts expended, the projects for which those funds were expended, and the current status of the projects. The Board of Trustees shall also post this report on its public Web site. (1939, c. 390, s. 9; 1941, c. 357, s. 7; 1945, c. 526, s. 5; 1957, c. 846, s. 1; 1959, c. 1181, s. 1; 1961, c. 397; 1967, c. 978, s. 8; 1971, c. 386, s. 3; 1973, c. 243, s. 10; 1979, c. 467, ss. 12, 13; 2017-129, s. 5(b); 2020-29, s. 8(b).)

§ 128-29.1: Repealed by Session Laws 2015-67, s. 4, effective July 1, 2015.

§ 128-30. Method of financing.

(a) Funds to Which Assets of Retirement System Credited. – All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of three funds, namely, the annuity savings fund, the pension accumulation fund, and the expense fund.

(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 and payments from the annuity savings fund shall be made as follows:

- (1) With respect to compensation paid on and after July 1, 1976, each participating employer shall deduct from the salary of each member on every payroll of the employer for every payroll period, six per centum (6%) of the compensation received by the member. Such rates shall apply uniformly to all members of the Retirement System, irrespective of class.
- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall

be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Article. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

- (3) The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this Article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.
- (4) 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), 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 four years for each member, and may be obtained in the following manner:
 - a. Approved leave of absence. – Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.
 - b. No educational leave policy. – Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal

to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.

- c. Educational program prior to July 1, 1981. – Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance as determined by the board of trustees upon the advice of the consulting actuary, plus a fee to be determined by the board of trustees.

Payments required to be made by the member and/or the employer under subparagraphs a or b are due by the 15th of the month following the month for which the service credit is allowed and payments made after the due date shall be assessed a penalty, in lieu of interest, of one percent (1%) per month or fraction thereof the payment is made beyond the due date; provided, that these payments shall be made prior to retirement and provided further, that if the member did not become a contributing member within 12 months after completing the educational program and failed to complete three years of subsequent membership service, except in the event of death or disability, any payment made by the member including penalty shall be refunded with regular interest thereon and the service credits cancelled prior to or at retirement.

(b1) Pick Up of Employee Contributions. – Anything within this section to the contrary notwithstanding, effective July 1, 1982, an employer, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended, may elect to pick up and pay the contributions which would be payable by the employees as members under subsection (b) of this section with respect to the service of employees after June 30, 1982.

The members' contributions picked up by an employer shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the annuity savings fund and accumulated within the fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Member contributions picked up by an employer shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by his employer. This deduction, however, shall not reduce his compensation as defined in subdivision (7a) of G.S. 128-21. Picked-up contributions shall be transmitted to the System monthly for the preceding month by means of a warrant drawn by the employer and payable to the Local Governmental Employees' Retirement System and shall be accompanied by a

schedule of the picked-up contributions on such forms as may be prescribed. In the case of a failure to fulfill these conditions the provisions of subsection (g)(3) of this section shall apply.

(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:

- (1) Within 90 days of the denial of the promotion or the error in reporting, by the payment of employee and employer contributions that would have been paid; or
- (2) After 90 days of the denial of the promotion or the error in reporting, 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.

For members or beneficiaries electing to make the employee contributions on the retroactive adjustment in compensation or on the underreported compensation, the member's or beneficiary's employer, which granted the retroactive promotion or erred in underreporting compensation and contributions, shall make the required employer contributions. Nothing contained in this subsection shall prevent an employer from paying all or a part of the interest assessed on the employee contributions; and to the extent paid by the employer, the interest paid by the employer shall be credited to the pension accumulation fund; provided, however, an employer does not discriminate against any member or beneficiary or group of members or beneficiaries in his employ in paying all or any part of the interest assessed on the employee contributions due.

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), 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), for reasons other than a wrongfully denied promotional opportunity or wrongful demotion where the member is promoted or the demotion is reversed retroactively.

- (c) Repealed by Session Laws 2017-129, s. 2(g), effective June 30, 2017.

(d) Pension Accumulation Fund. – The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the Board of Trustees, an amount equal to a certain percentage of the actual compensation of each member, to be known as the "normal contribution" and an additional amount equal to a percentage of the member's actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation and duly approved by the Board of Trustees, which shall be called the "actuarially determined employer contribution rate."
- (2) Repealed by Session Laws 2017-129, s. 2(i), effective June 30, 2017.
- (2a) The actuarially determined employer contribution rate shall be calculated annually by the actuary using assumptions and a cost method approved by the Actuarial Standards Board of the American Academy of Actuaries and selected by the Board of Trustees.
- (3) The "past service liability contribution" shall be set for each employer on the basis of the prior service credits allowable to the employees thereof, who are entitled to prior service certificates, and shall be paid for a period of approximately 30 years, provided that the length of the period of payment for each employer after contributions begin shall be determined by the Board of Trustees as the result of actuarial valuations.
- (4) Upon the date of participation for each employer, the past service liability payable by such employer shall be set, by deducting from the present value of the total liability for all pensions payable on account of all members and pensioners of the System who became participants through service for such employer, the present value of the future normal contributions payable, and the amount of any assets resulting from any contributions previously made by such employer. Then the "past service liability contribution rate" for such employer shall be the per centum of the total annual compensation of all members employed by the employer which is estimated to extinguish the liability in 24 years.
- (5) Notwithstanding Chapter 150B of the General Statutes, the total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the actuarially determined employer contribution rate and the past service liability contribution rate of the total earned compensation of all members during the preceding year as adjusted under a contribution rate policy adopted by the Board of Trustees and known as the "required employer contribution rate." The Board of Trustees shall not adopt a contribution rate policy that results in a rate less than the normal contribution rate.
- (6) Repealed by Session Laws 2017-129, s. 2(i), effective June 30, 2017.

- (7) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.
 - (8) Repealed by Session Laws 2017-129, s. 2(i), effective June 30, 2017.
 - (9) Notwithstanding Chapter 150B of the General Statutes and the foregoing provisions of this subsection, the actuary shall determine an additional "accrued liability contribution rate" and a "normal contribution rate" on account of the total earned compensation of each employer's law enforcement officers each year, known as the "required employer contribution for law enforcement officers rate." The required employer contribution for law enforcement officers rate may be adjusted under a contribution rate policy adopted by the Board of Trustees and added to the employers' past service liability rate. The Board of Trustees shall not adopt a contribution rate policy that results in a rate less than the normal contribution rate.
 - (10) For fiscal years beginning subsequent to January 1, 2017, the sum of the "normal contribution" and the "accrued liability contribution" shall not be less than the employee contribution required under subsection (b) of this section.
- (e) Repealed by Session Laws 2017-129, s. 2(k), effective June 30, 2017.
 - (f) Expense Fund. – The expense fund shall be the fund from which the expenses of the administration of the Retirement System shall be paid, exclusive of amounts payable as retirement allowances and as other benefits provided herein. Contribution shall be made to the expense fund as follows:
 - (1) The Board of Trustees shall determine annually the amount required to defray such administrative expenses for the ensuing fiscal year and shall adopt a budget in accordance therewith. The budget estimate of such expenses shall be paid to the expense fund from the pension accumulation fund.
 - (2) For the purpose of organizing the Retirement System and establishing an office, the Board of Trustees may provide as a prerequisite to participation in the Retirement System that each participating employer or employee or both shall pay an additional contribution to the Retirement System for the expense fund not to exceed two dollars (\$2.00) for each employee, such contribution of the employee to be credited to his individual account in the annuity savings fund at such later time as the Board of Trustees shall determine, and/or the Board of Trustees may borrow such amounts as may be necessary to organize and establish the Retirement System.
- (g) Collection of Contributions. –
 - (1) The collection of members' contributions shall be as follows:
 - a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of participation in the Retirement System the contributions payable by such member as provided in this Article. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as vouchers for the amount so deducted.
 - b. The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this Article and shall transmit monthly, or at such time as the Board of Trustees shall

designate, the amount specified to be deducted, to the secretary-treasurer of the Board of Trustees. The secretary-treasurer of the Board of Trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said Board of Trustees for use according to the provisions of this Article.

- (2) The collections of employers' contributions shall be made as follows:
- a. Upon the basis of each actuarial valuation provided herein the Board of Trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection (d) of this section. Such employer contributions shall be transmitted to the secretary-treasurer of the Board of Trustees together with the employee deductions as provided under sub-subdivision b. of subdivision (1) of this subsection.
 - b. Each employer shall transmit to the Retirement System on account of each member who retires on or after January 1, 2015, having earned his or her last month of membership service as an employee of that employer the lump sum payment, as calculated under G.S. 128-26(y) for inclusion in the Pension Accumulation Fund, that would have been necessary in order for the retirement system to restore the member's retirement allowance to the pre-cap amount. Employers are not required to make contributions on account of any retiree who became a member on or after January 1, 2015, and who earned at least five years of membership service in the Retirement System after January 1, 2015. The retirement allowance of a member with a final average compensation of more than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall not be subject to the contribution-based benefit cap if the compensation was earned from multiple simultaneous employers, unless an employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000). An employer is not required to make contributions on account of any retiree whose final average compensation exceeds one hundred thousand dollars (\$100,000), as hereinafter indexed, based upon compensation earned from multiple simultaneous employers, unless that employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000), as provided and indexed under G.S. 128-27(a3).

Under such rules as the Board of Trustees shall adopt, the Retirement System shall report monthly to each employer a list of those members for whom the employer made a contribution to the Retirement System in the preceding month that are most likely to require an additional employer contribution should they elect to retire in the following 12 months, if applicable. Reports received under this section shall not be public records. Employers or former employers in receipt of a report under this section shall treat the report, and the information contained within that report, as confidential and as though it were still held by the Retirement System under G.S. 128-33.1.

- (3) In the event the employee or employer contributions required under this section are not received by the date set by the Board of Trustees and provided that a one-time exception has not been agreed upon in advance due to exigent circumstances, the Board shall assess the employer with a penalty, in lieu of interest, of 1% per month with a minimum penalty of twenty-five dollars (\$25.00). The Board may waive one penalty per employer every five years if the Board finds that the employer has consistently demonstrated good-faith efforts to comply with the set deadline. If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer, or the municipality or county of which such employer is an integral part, from any funds of the State or any funds collected by the State shall be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default.

In the event that an employer fails to submit payment of any required contributions or payments to the Retirement Systems Division, other than the one percent (1%) payment provided for in the first paragraph of this subdivision, within 90 days after the date set by the Board of Trustees, the Board shall notify the State Treasurer of its intent to collect the delinquent contributions and other payments due to the Retirement Systems Division and request an interception of State appropriations due to the participating employer.

Except as provided in this subdivision, upon notification by the Board of Trustees to the State Treasurer and the Office of State Budget and Management as to the default of the employer, the Office of State Budget and Management shall withhold from any State appropriation due to that employer an amount equal to the sum of all delinquent contributions and other debts due to the Retirement Systems Division and shall transmit that amount to the Retirement Systems Division. For the purposes of this subsection, the date set by the Board of Trustees for payment of the contribution-based benefit cap liability shall be 12 months after the member's effective date of retirement.

- (4) In conjunction with the employee and employer contributions required under this section, the Board of Trustees shall direct employers to submit such information on a monthly basis as is necessary for proper administration of the Retirement System, actuarial valuation, and reporting under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. Submission of such information by an employer to the Retirement System constitutes a certification of its accuracy.

(g1) **Felony Forfeiture Impact on Contribution-Based Benefit Cap.** If an employer made contributions on account of a retiree subject to the contribution-based benefit cap under G.S. 135-8(f)(2)f. and that retiree later forfeits retirement benefits under G.S. 128-38.4, 128-38.3A, 135-18.10A, 135-18.30, 135-75.1, or 135-75.1A, then the Retirement Systems Division may provide a credit to the employer. This credit shall be calculated in an amount reflecting the impact of the forfeiture on the amount due under G.S. 128-26(y).

(h) **Merger of Annuity Reserve Fund, and Pension Reserve Fund into Pension Accumulation Fund.** – Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the Board of Trustees shall determine, the annuity reserve fund and the pension reserve fund shall be merged into and become a part of the pension accumulation fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the Board of Trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System.

(i) **Procedure and Payment to Cease Participation.** – Any employing unit that is allowed to cease participation in the Retirement System by the General Assembly shall do the following:

- (1) The employer shall notify its employees and the Board of Trustees, in writing, of its action. A withdrawing employer shall be required to make a lump-sum withdrawal liability payment to the Board of Trustees as provided by this section.
- (2) Complete withdrawal by an employer shall be the first day of the month following the date the Board of Trustees receives the employer's written notification. However, the complete withdrawal date shall not occur before the withdrawal liability is determined, as provided in subdivision (5) of this subsection.
- (3) After complete withdrawal, all employees of the withdrawing employer shall be ineligible to accrue future benefits with the Retirement System due to employment with the withdrawing employer.
- (4) All active or inactive members of the employer shall be eligible for benefits accrued with the Retirement System up to the complete withdrawal date. However, no retirement allowance or return of accumulated contributions shall be paid until the member actually terminates employment and completely separates from active service with the withdrawing employer, and there is no intent or agreement, express or implied, to return to service with the withdrawing employer.
- (5) On the date of complete withdrawal, the withdrawal liability of an employer is the greater of one thousand dollars (\$1,000) or the amount determined by a. multiplied by the ratio of b. to c., as follows:
 - a. The excess of the actuarial present value of the vested accrued benefits of the Retirement System's members over the market value of its assets, both as of the date of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date based on the plan

provisions and actuarial assumptions used in the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date, except the interest rate assumption shall be reduced by an amount determined by the consulting actuary to reflect the increased investment, mortality, and other actuarial risk for the exiting agency's participants.

- b. The total present value of accrued benefits of all active members of the withdrawing employer as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.
 - c. The total present value of accrued benefits of all active members of the Retirement System as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.
- (6) The actuarial costs to determine the amount described in subdivision (5) of this subsection shall be paid by the withdrawing employer. An employer that does not pay the lump-sum withdrawal liability payment described in subdivision (5) of this subsection and the actuarial costs to determine this withdrawal liability within 90 days of the complete withdrawal date will continue to be a participating employer.
- (7) Upon the complete withdrawal of the employer, the Retirement System shall have no further legal obligation to the employer or its employees, nor shall the Retirement System be held accountable for the continued future accrual of any retirement benefit rights to which the employees may be entitled beyond the complete withdrawal date. Any litigation regarding the forfeiture of any benefits because of the employer's complete withdrawal from the Retirement System shall be the sole legal responsibility of the withdrawing employer, and the withdrawing employer shall indemnify and hold harmless the Retirement System, its Board of Trustees, its employees, and the State of North Carolina from any claims, losses, costs, damages, expenses, and liabilities, including, without limitation, court costs, and reasonable attorneys' fees asserted by any person or entity as a result of the employer's withdrawal from the Retirement System.

(j) Pension Spiking Report. – Upon receipt of a report from the Retirement System generated pursuant to G.S. 128-30(g)(2)b., containing a list of employees for whom the employer made a contribution to the North Carolina Local Governmental Employees' Retirement System that is likely to require an additional employer contribution should the employee elect to retire in the following 12 months, the employer's chief financial officer shall transmit a copy of the report to the governing body of the employer, if the employer has a governing body. Reports received under this section shall not be public records. Employers and former employers in receipt of a report under this section shall treat the report, and the information contained within that report, as confidential and as though it were still held by the Retirement System under G.S. 128-33.1. (1939, c. 390, s. 10; 1941, c. 357, s. 8; 1943, c. 535; 1945, c. 526, s. 6; 1951, c. 274, ss. 7-9; 1955, c. 1153, s. 7; 1959, c. 491, s. 9; 1965, c. 781; 1967, c. 978, ss. 9, 10; 1971, c. 325, ss. 17-19; 1975, 2nd Sess., c. 983, ss. 129, 130; 1981, c. 1000, ss. 1, 3; 1981 (Reg. Sess., 1982), c. 1282, s. 9; 1985, c. 479, s. 196(p)-(r); c. 539, ss. 1, 2; 1991, c. 585, s. 2; 1995, c. 509, s. 68; 2003-359, s. 20; 2009-66, s. 7(b); 2010-72, s. 8(b); 2012-178, s. 3; 2014-88, s. 1(f); 2014-112, s. 2(b);

2015-164, ss. 5(b), 6(b); 2015-168, s. 3(b); 2016-56, ss. 6(b), 7(b); 2017-125, s. 2(b); 2017-128, ss. 4(c), 8(b); 2017-129, s. 2(c), (d), (g), (i), (k); 2018-52, s. 9(b); 2018-85, s. 13; 2020-29, s. 4(b); 2020-48, ss. 1.8(b), 1.16(e), (f).)

§ 128-31. Exemptions from execution; employing unit to offset amount owed by member or beneficiary.

(a) Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided. Notwithstanding any provisions to the contrary, application for System approval of a domestic relations order dividing a person's interest under the Retirement System shall be accompanied by an order consistent with the system-designed template order provided on the System's Web site. Notwithstanding any provisions to the contrary, the Retirement System shall only make payment of a share of the member's retirement benefits to the member's former spouse based upon a domestic relations order, and the former spouse shall not be permitted to receive a share of the member's retirement benefits until the member begins to receive the benefits, consistent with the system-designed template order. Notwithstanding any provisions to the contrary, the former spouse shall not be entitled to any type or form of benefit or any option not otherwise available to the member. Notwithstanding any provisions to the contrary, for orders entered on or after January 1, 2015, payment to a member's former spouse pursuant to any such domestic relations order shall be limited to the lifetime of that former spouse and, upon the death of that former spouse, the former spouse's share shall revert to the member.

(b) Notwithstanding any provisions to the contrary, any overpayment of benefits or erroneous payments to a member in a State-administered retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of North Carolina, including any benefits paid to, or State Health Plan premiums or claims paid on behalf of, any member who is later determined to have been ineligible for those benefits or unentitled to those amounts, may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary.

(c) Notwithstanding any provisions to the contrary, if the member or beneficiary is an employee of an employing unit of the State or any political subdivision of the State, then any overpayment of benefits or erroneous payments to, or on behalf of, the member or beneficiary shall be offset against the net wages of the employee. If a member or beneficiary owes an amount to the Retirement System, has been notified of this amount in writing, and has not entered into a payment plan acceptable to the Retirement System, then the Retirement System shall notify the member or beneficiary's employer of the amount

owed. Upon receipt of this notice from the Retirement System, the employer shall offset the amount owed against not less than ten percent (10%) of the net wages of the member or beneficiary until the Retirement System notifies the employer that the amount owed has been paid in full. The Retirement System's notice shall be prima facie evidence that the amount owed is valid and, notwithstanding any other provision of law to the contrary, the employer has no obligation to verify the amount owed. The employer shall provide no more than 30 days' but not less than 14 days' written notice to the member or beneficiary prior to beginning the offset. The employer shall remit all amounts offset under this subsection to the Retirement System in intervals corresponding with its regular pay periods. If an employer fails to adhere to the provisions of this section, then the Retirement System shall, after notice to the employer of its failure to cooperate, be entitled to seek recovery of any amounts due directly from the employer.

(d) Nothing in this section shall be construed to limit the Retirement System's ability to pursue alternative judicial remedies against a member or a beneficiary, including the pursuit of a judgment and lien against real property. (1939, c. 390, s. 11; 1985, c. 402; c. 649, s. 5; 1989, c. 665, s. 3; c. 792, s. 2.4; 2005-91, s. 11; 2013-405, s. 4(b); 2014-112, s. 5(b); 2017-135, s. 9(b); 2018-52, s. 2(c); 2019-172, s. 1.2.)

§ 128-32. Protection against fraud.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a Class 1 misdemeanor. Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had their records been correct, the Board of Trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1939, c. 390, s. 12; 1993, c. 539, s. 945; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 128-32.1. Failure to respond.

If a member fails to respond within 120 days after preliminary option figures and the Form 6-E or Form 7-E are transmitted to the member, or if a member fails to respond within 120 days after the effective date of retirement, whichever is later, the Form 6 or Form 7 shall be null and void; the retirement system shall not be liable for any benefits due on account of the voided application, and a new application must be filed establishing a subsequent effective date of retirement. If an applicant for disability retirement fails to furnish requested additional medical information within 90 days following such request, the application shall be declared null and void under the same conditions outlined above, unless the applicant is eligible for early or service retirement in which case the application shall be processed accordingly, using the same effective date as would have been used had the application for disability retirement been approved. The Director of the Retirement Systems Division, acting on behalf of the Board of Trustees, may extend the 120-day limitation provided for in this section when a member has suffered incapacitation such that

a reasonable person would not have expected the member to be able to complete the required paperwork within the regular deadline, or when an omission by the Retirement Systems Division prevents the member from having sufficient time to meet the regular deadline. (2005-91, s. 12; 2009-66, s. 4(a); 2010-72, s. 6(b); 2016-108, s. 3(b).)

§ 128-33. Certain laws not applicable to members.

Subject to the provisions of Article 2 of Chapter 135 of Volume 3B of the General Statutes, as amended, no other provision of law in any other statute which provides wholly or partly at the expense of any county, city or town for pensions or retirement benefits for employees of the said county, city or town, their widows, or other dependents shall apply to members or beneficiaries of the Retirement System established by this Article. (1939, c. 390, s. 13; 1955, c. 1153, s. 8.)

§ 128-33.1. Public records held by the Retirement System.

(a) The following definitions apply in this section:

- (1) Employment-related information. – As defined in G.S. 126-22(b)(3).
- (2) Personal information. – As defined in G.S. 126-22(b)(3).
- (3) Retirement file. – Any employment-related, retirement-related, or personal information of members in a State-administered retirement plan gathered by the Retirement Systems Division of the Department of State Treasurer.
- (4) Retirement-related information. – Information including membership and service details, benefit payment information, and other information the Retirement Systems Division of the Department of State Treasurer deems necessary to administer a retirement plan.

(b) Member retirement files are not subject to inspection and examination as authorized by G.S. 132-6 except as provided in G.S. 135-6(p), G.S. 128-28(q), and subsections (c), (d), and (e) of this section.

(c) The following information regarding members and individuals in receipt of a recurring monthly benefit, if held by the Retirement System, is public subject to subsection (d) of this section:

- (1) Name.
- (2) Age.
- (3) Date of membership in the applicable Retirement System, first service earned date, date of first enrollment, date of first employment, and date of retirement.
- (4) The terms of any contract by which the member is employed whether written or oral, past and current, to the extent that the Retirement System has the written contract or a record of the oral contract in its possession.
- (5) Current or most recently held position or title.
- (6) Compensation and other relevant remuneration history and benefits paid.
- (7) Date, general description, and type of each change and the corresponding employing agency.
- (8) The office or station to which the member is currently assigned, if any.
- (9) The record of benefit payments made by one of the Retirement Systems or Disability Benefits Programs administered by the Department of State

Treasurer to a member or to the survivor, beneficiary, or alternate payee of a member.

(10) Purchases of educational leave.

(d) Subject only to rules and policies for the safekeeping of member retirement files adopted by the Board of Trustees, every person having custody of the retirement file information outlined in subsection (b) of this section shall permit the information to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any retirement file for the purpose of inspecting, examining, or copying the file has a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

(e) The Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former State and local government employees, former public school employees, or former community college employees to domiciled, nonprofit organizations representing 10,000 or more retired State government, local government, or public school employees.

(e1) The Retirement Systems Division of the Department of State Treasurer may disclose to employers or former employers that made a contribution for an employee or former employee to the Retirement System any information not public under this section regarding that employee necessary to conduct the business of the Retirement System. Employers and former employers in receipt of this information shall treat the information as confidential and this information shall not be a public record.

(f) All information other than the information listed in subsection (c) of this section contained in a retirement file is confidential and not open for inspection and examination except to the following persons:

- (1) The member, or the member's authorized agent, who may examine his or her own retirement file, except for any information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. A member's medical record may be disclosed to a licensed physician in writing by the member.
- (2) A member of the General Assembly who may inspect and examine records under the authority of G.S. 120-19.
- (3) A party by authority of a proper court order may inspect and examine a particular confidential portion of a member's retirement file.

(g) Any public official or employee who knowingly and willfully permits any person to have access to or custody or possession of any portion of a retirement file designated as confidential by this section, unless the person is one specifically authorized by this section to have access thereto for inspection and examination, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00).

(h) Any person not specifically authorized by this section to have access to a retirement file designated as confidential by this section, who knowingly and willfully examines, removes, or copies any portion of a confidential retirement file, is guilty of a Class 3 misdemeanor and upon conviction shall be fined in the discretion of the court but

not in excess of five hundred dollars (\$500.00). (2016-108, s. 2(c); 2018-85, s. 8(b); 2020-48, s. 1.16(d).)

§ 128-34. Transfer of members.

(a) Any member of the North Carolina Governmental Employees' Retirement System who leaves the service of his employer and enters the service of another employer participating in the North Carolina Governmental Employees' Retirement System shall maintain his status as a member of the Retirement System and shall be credited with all of the amounts previously credited to his account in any of the funds under this Article, but the new employer shall be responsible for any accrued liability contribution payable on account of any prior service credit which such employee may have at the time of the transfer, and such employee shall be given such status and be credited with such service with the new employer as allowed with the former employer.

(b) Any member of the Local Governmental Employees' Retirement System shall be entitled prior to his retirement to transfer to this Retirement System his credits for membership and prior service in the Teachers' and State Employees' Retirement System: Provided, the actual transfer of employment is made while he has an active account in the State System and such person shall request the State System to transfer his accumulated contributions, interest, and service credits to this Retirement System; provided further, the State System agrees to transfer to this Retirement System the amount of reserve held in the State System as the result of previous contributions of the employer on behalf of the transferring employee.

(c) Any member whose services are terminated for any reason other than retirement or death who becomes employed by an employer participating in the Teachers' and State Employees' Retirement System shall be entitled to transfer to the State System his credits for membership and prior service in this Retirement System in accordance with G.S. 135-18.1: Provided, the actual transfer of employment is made while he has an active account in this Retirement System and such persons shall request this Retirement System to transfer his accumulated contributions, interest, and service credits to the State System. When such request is made by a member who is entitled to make it and who becomes a member of the State System after July 1, 1969, this Retirement System will also transfer to the State System the amount of reserve held by this System as a result of previous contributions of the employer on behalf of the transferring employee.

(d) The accumulated contributions and creditable service of any member whose service as an employee has been or is terminated other than by retirement or death and who, while still a member of this Retirement System, became or becomes a member, as defined in G.S. 135-53(11), of the Consolidated Judicial Retirement System for a period of five or more years may, upon application of the member, be transferred from this Retirement System to the Consolidated Judicial Retirement System. In order to effect the transfer of a member's creditable service from the Local Governmental Employees' Retirement System to the Consolidated Judicial Retirement System, there shall be transferred from the Local Governmental Employees' Retirement System to the Consolidated Judicial Retirement System the sum of (i) the accumulated contributions of

the member credited in the annuity savings fund and (ii) the amount of reserve held in the Local Governmental Employees' Retirement System as a result of previous contributions by the employer on behalf of the transferring member. (1939, c. 390, s. 14; 1971, c. 325, s. 20; 1973, c. 242, s. 11; 1999-237, s. 28.24(a).)

§ 128-35. Obligations of pension accumulation fund.

The maintenance of annuity reserves and pension reserves as provided for, and regular interest creditable to the various funds as provided in G.S. 128-30, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this Article, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this Article shall be used for the payment of said obligations of the said fund. (1939, c. 390, s. 15.)

§ 128-36. Local laws unaffected; when benefits begin to accrue.

Nothing in this Article shall have the effect of repealing any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city or town or prohibiting the enactment of any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town. No payment on account of any benefit granted under the provisions of G.S. 128-27, subsections (a) to (d) inclusive, shall become effective or begin to accrue until the end of one year following the date the System is established nor shall any compulsory retirement be made during that period. The provisions of this Article shall apply only to those counties, cities or towns whose governing authorities voluntarily elect to be bound by same. (1939, c. 390, s. 16; 1941, c. 357, s. 9B; 1945, c. 526, s. 7A.)

§ 128-36.1: Repealed by Session Laws 1977, c. 318.

§ 128-37. Membership of employees of district health departments or public health authorities.

Under such rules and regulations as the Board of Trustees shall establish and promulgate, the boards of county commissioners of any group of counties composing a district health department, or the governing board of any public health authority, or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health, may elect that employees of such health departments may be members of the North Carolina Local Governmental Employees' Retirement System to the extent of that part of their compensation paid by the various counties composing said district health department. (1949, c. 1012; 1951, c. 700; 1997-502, s. 4.)

§ 128-37.1. Membership of employees of county social services department.

Under such rules and regulations as the Board of Trustees shall establish and promulgate, the board of county commissioners of any county may elect that employees of

the county social services department may be members of the North Carolina Local Governmental Employees' Retirement System; provided, that such membership may be elected jointly with such county health department employees as provided under G.S. 128-37. (1959, c. 1179; 1969, c. 982.)

§ 128-37.2. Continued membership for certain fire departments.

(a) In order to participate in the Local Governmental Employees' Retirement System after October 1, 2015, the charter or articles of incorporation of fire departments must include a provision that provides that the governing body of the local government entity that holds the contract with the highest dollar value to the fire department for provision of fire services shall have the authority to remove from office up to fifty percent (50%) plus one member of the Board of Trustees or Board of Directors of the fire department. Before exercising this authority, the local government entity shall notify the affected fire department and give the fire department the opportunity to be heard in a public meeting. When any fire department board member is removed, the resulting vacancy shall be filled pursuant to the bylaws of the fire department.

(b) This section only applies to fire departments that commenced participation in the Local Governmental Employees' Retirement System between 1977 and 1992 pursuant to Chapter 316 of the Session Laws of 1977 and have contracts to provide fire protection to a city, county, or instrumentality of the State. (2015-88, ss. 10(a), (b).)

§ 128-38. Reservation of power to change.

The General Assembly reserves the right at any time and from time to time, and if deemed necessary or appropriate by said General Assembly in order to coordinate with any changes in the benefit and other provisions of the Social Security Act made after January 1, 1955, to modify or amend in whole or in part any or all of the provisions of the North Carolina Local Governmental Employees' Retirement System. (1955, c. 1153, s. 9.)

§ 128-38.1. Termination or partial termination; discontinuance of contributions.

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested. (1987, c. 177, s. 1(a), (b).)

§ 128-38.2. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars (\$200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years

after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars (\$150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars (\$200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

All the provisions in this subsection have been enacted to make clear that the Plan shall not base contributions or Plan benefits on annual compensation in excess of the limits prescribed by Section 401(a)(17) of the Internal Revenue Code, as adjusted from time to time, subject to certain federal grandfathering rules.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after September 8, 2009, and for all Plan years to which the minimum distribution rules of the Internal Revenue Code are applicable, with respect to any member who has terminated employment, the Plan shall comply with federal income tax minimum distribution rules by applying a reasonable and good faith interpretation to Section 401(a)(9) of the Internal Revenue Code.

(d) This subsection applies to distributions and rollovers from the Plan. The Plan does not have mandatory distributions within the meaning of Section 401(a)(31) of the Internal Revenue Code. With respect to distributions from the Plan and notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's

election under this Article, a distributee (including, after December 31, 2006, a non-spouse beneficiary if that non-spouse beneficiary elects a direct rollover only to an inherited traditional or Roth IRA as permitted under applicable federal law) may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. As used in this subsection, an "eligible retirement plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, on and after January 1, 2009, a Roth IRA, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into that plan from this Plan. As used in this subsection, a "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution shall not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the exclusion of any after-tax portion from such a rollover distribution in the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. That portion may be transferred, pursuant to applicable federal law, to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, to a qualified defined benefit plan, or to a qualified defined contribution plan described in Section 401(a), 403(a), or 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-20.1. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the

Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code. (1989, c. 276, s. 2; 1993, c. 531, s. 4; 1995, c. 361, s. 3; 2002-71, s. 4; 2009-66, s. 1(d); 2012-130, s. 4(b).)

§ 128-38.3. Deduction for payments allowed.

(a) Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of employers as defined in G.S. 128-21(11), may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(b) Any beneficiary eligible for coverage under the State Health Plan may also authorize, in writing, the monthly deduction from the beneficiary's retirement benefits of a designated lump sum to be paid to the State Health Plan for any dependent whom the beneficiary wishes to cover under the State Health Plan. In the event that the beneficiary's own State Health Plan coverage is contributory, in whole or in part, the beneficiary may also authorize a designated lump sum to be paid to the State Health Plan on behalf of the beneficiary. In addition, a beneficiary may similarly authorize the deduction for supplemental voluntary insurance benefits, provided that the deduction is authorized by the Department of State Treasurer and is payable to a company with which the Department of State Treasurer has or had an exclusive contractual relationship. Any such authorization shall remain in effect until revoked by the beneficiary.

(c) For local employers who made arrangements with the Retirement System prior to January 1, 2017, any beneficiary who is a retiree from an employer in the Retirement System under this Article may authorize the periodic deduction from the beneficiary's retirement benefits as designated lump sum to be paid to the beneficiary's former employer for the purpose of providing health benefits. The authorization shall remain in effect until revoked by the beneficiary, and proof of the authorization must be available on request of the Department of the State Treasurer. The Department of State Treasurer is prohibited from making any arrangements to deduct from a beneficiary's retirement benefits an amount to be paid to the beneficiary's former employer for the purpose of providing health benefits. (2001-424, s. 32.31; 2002-126, s. 6.4(b); 2012-178, s. 4(b); 2017-128, s. 3.)

§ 128-38.4. Forfeiture of retirement benefits for certain felonies committed while serving as elected government official.

(a) Except as provided in G.S. 128-26(w), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under the federal laws listed in subsection (b) of this section or the laws of this State listed in subsection (c) of this section if all of the following apply:

- (1) The federal or State offense is committed while serving as an elected government official.
 - (2) The conduct on which the federal or State offense is based is directly related to the member's service as an elected government official.
- (b) The federal offenses covered by this section are as follows:
- (1) A felony violation of 18 U.S.C. § 201 (Bribery of public officials and witnesses), 18 U.S.C. § 286 (Conspiracy to defraud the Government with respect to claims), 18 U.S.C. § 287 (False, fictitious or fraudulent claims), 18 U.S.C. § 371 (Conspiracy to commit offense or to defraud United States), 18 U.S.C. § 597 (Expenditures to influence voting), 18 U.S.C. § 599 (Promise of appointment by candidate), 18 U.S.C. § 606 (Intimidation to secure political contributions), 18 U.S.C. § 641 (Public money, property, or records), 18 U.S.C. § 666 (Embezzlement and theft), 18 U.S.C. § 1001 (Statements or entries generally), 18 U.S.C. § 1341 (Frauds and swindles), 18 U.S.C. § 1343 (Fraud by wire, radio, or television), 18 U.S.C. § 1503 (Influencing or injuring officer or juror generally), 18 U.S.C. § 1951 (Interference with commerce by threats or violence), 18 U.S.C. § 1952 (Interstate and foreign travel or transportation in aid of racketeering enterprises), 18 U.S.C. § 1956 (Laundering of monetary instruments), 18 U.S.C. § 1962 (Prohibited activities), or section 7201 of the Internal Revenue Code (Attempt to evade or defeat tax).
 - (2) Reserved for future codification purposes.
- (c) The offenses under the laws of this State covered by this section are as follows:
- (1) A felony violation of any of the following provisions of the General Statutes:
 - a. Article 29 of Chapter 14, Bribery.
 - b. Article 30 of Chapter 14, Obstructing Justice.
 - c. Article 30A of Chapter 14, Secret Listening.
 - d. G.S. 14-228, Buying and selling offices.
 - e. Part 1 of Article 14 of Chapter 120, Code of Legislative Ethics.
 - f. Article 20 of Chapter 163, Absentee Ballot.
 - g. Article 22 of Chapter 163, Regulation of Election Campaigns – Corrupt Practices and Other Offenses Against the Elective Franchise.
 - h. G.S. 14-90, Embezzlement of property received by virtue of office or employment.
 - i. G.S. 14-91, Embezzlement of State property by public officers and employees.
 - j. G.S. 14-92, Embezzlement of funds by public officers and trustees.
 - k. G.S. 14-99, Embezzlement of taxes by officers.
 - l. G.S. Subsection (a) of G.S. 14-454.1, Accessing government computers.
 - m. Subsection (a1) of G.S. 14-455, Damaging computers, computer programs, computer systems, computer networks, and resources.
 - n. G.S. 14-456.1, Denial of government computer services to an authorized user.
 - (2) Perjury or false information as follows:

- a. Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes an offense within the purview of an offense listed in subdivision (1) of subsection (c) of this section.
- b. Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another as specified by subdivision (2) of this subsection.
- c. Perjury under Article 22A of Chapter 163 of the General Statutes.

(d) All monies forfeited under this section shall be remitted to the Civil Penalty and Forfeiture Fund. (2007-179, s. 2(a); 2017-6, s. 3; 2018-84, s. 2(b); 2018-146, ss. 3.1(a), (b), 6.1.)

§ 128-38.4A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

(a) Except as provided in G.S. 128-26(x), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the member is in service.
- (2) The conduct resulting in the member's conviction is directly related to the member's office or employment.

(b) Repealed by Session Laws 2020-48, s. 4.3(b), effective June 26, 2020.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of this section must be made in a total lump-sum payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited. (2012-193, s. 3; 2020-48, s. 4.3(b).)

§ 128-38.4B. Prohibition on purchase of forfeited service.

Any member whose retirement benefits have been forfeited under G.S. 128-38.4 or G.S. 128-38.4A is prohibited from subsequently purchasing or repurchasing either those forfeited benefits or any creditable membership service associated with those forfeited benefits and that service may not be used for the purposes of eligibility for benefits in any retirement system that provides reciprocal benefits. (2018-52, s. 6(b); 2020-48, s. 4.5(b).)

§ 128-38.5. Improper receipt of decedent's retirement allowance.

A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud, receives money as a result of cashing, depositing, or receiving a direct deposit of a

decedent's retirement allowance and the person (i) knows that he or she is not entitled to the decedent's retirement allowance, (ii) receives the benefit at least two months after the date of the retiree's or beneficiary's death, and (iii) does not attempt to inform this Retirement System of the retiree's or beneficiary's death. (2011-232, s. 10(b); 2013-288, s. 9(c).)

§ 128-38.6. Employee protection and remedies against unlawful retaliation for furnishing information to the Retirement Systems Division.

(a) In the absence of fraud or malice, no person who furnishes information to the staff of the Retirement Systems Division relating to the investigation of possible violations of retirement law shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply such information to the Division.

(b) Any employee of a participating local employer who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee in furtherance of the Retirement Systems Division's receipt of information concerning possible violations of retirement law, including cooperation with the Division's investigation of possible violations, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination or retaliation by the employing unit, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination or retaliation, including litigation costs and reasonable attorneys' fees. An employee may bring an action in superior court for the relief provided in this section. (2012-185, s. 1.)

§ 128-38.7: Reserved for future codification purposes.

§ 128-38.8: Reserved for future codification purposes.

§ 128-38.9: Reserved for future codification purposes.

§ 128-38.10. Qualified Excess Benefit Arrangement.

(a) The following words and phrases as used in this section, unless a different meaning is plainly required by the context, have the following meanings:

- (1) "Board of Trustees" means the Board of Trustees established by G.S. 128-28.
- (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time.
- (3) "Payee" means a retired member, or the survivor beneficiary of a member or retired member.
- (4) "Qualified Excess Benefit Arrangement" means the qualified excess benefit arrangement under section 415(m) of the Internal Revenue Code established under this Article.

(5) "Retirement System" means the North Carolina Local Governmental Employees' Retirement System.

(b) The Qualified Excess Benefit Arrangement (QEBA) is established effective January 1, 2014, and placed under the management of the Board of Trustees. The purpose of the QEBA is solely to provide the part of a retirement allowance or benefit that would otherwise have been payable by the North Carolina Local Governmental Employees' Retirement System except for the limitations under section 415(b) of the Internal Revenue Code. The QEBA, as set forth in this section, is intended to constitute a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code.

(c) Eligibility to Participate in the QEBA. – Effective as of January 1, 2014, a payee shall participate in the QEBA for any calendar year, or portion of the calendar year, during which he or she receives a retirement allowance or benefit payment on and after January 1, 2014, from the North Carolina Local Governmental Employees' Retirement System that is reduced due to the application of the maximum benefit provisions of section 415(b) of the Internal Revenue Code. For purposes of the QEBA, a payee is a retired member or survivor beneficiary of a member or retired member who is receiving monthly retirement benefit payments from a Retirement System.

(d) Supplemental Benefit Payable Under the QEBA. – Effective January 1, 2014, a payee shall receive each month, commencing on and after January 1, 2014, a monthly supplemental benefit equal to the difference between the amount of that payee's monthly retirement benefit paid under the North Carolina Local Governmental Employees' Retirement System on and after January 1, 2014, and the amount that would have been payable to that payee from the North Carolina Local Governmental Employees' Retirement System in that month if not for the reduction due to the application of section 415(b) of the Internal Revenue Code. That supplemental benefit shall be computed and payable under the same terms, at the same time, and to the same person as the related benefit payable under the Retirement System. A payee cannot elect to defer the receipt of all or any part of the supplemental payments due under the QEBA. The supplemental benefit paid under this section shall be taxable under North Carolina law in the same manner as the benefit paid under the North Carolina Local Governmental Employees' Retirement System.

(d1) The last employer of a payee who retires on or after August 1, 2016, and who receives any supplemental benefit payment under this section shall be required to reimburse the QEBA in the amount of any supplemental benefit payment made to that payee. The reimbursement amount shall be calculated on an annual basis every calendar year. For purposes of calculating the reimbursement amount, the Board of Trustees may include a pro rata share of direct costs attributable to administration of the QEBA. The Fiscal Research Division of the General Assembly shall be required to review all reimbursement amounts prior to notifying an employer of the reimbursement amount owed.

The employer shall have 60 calendar days from the date of notification of the reimbursement amount owed to pay the amount in full or the employer shall be assessed a

penalty, in lieu of interest, of one percent (1%) per month, or fraction thereof, that the payment is made beyond the due date.

(e) Funding of the QEBA. – The QEBA shall be unfunded within the meaning of federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise shall be made or allowed. The Board of Trustees, upon the recommendation of the actuary engaged by the Board of Trustees, shall determine the employer contributions required to pay the benefits due under the QEBA for each fiscal year. The required contributions shall be paid by all participating employers. The required contributions shall be deposited in a separate fund from the fund into which regular employer contributions are deposited for the underlying Retirement System. The benefit liability for the QEBA shall be determined each fiscal year and assets shall not be accumulated to pay benefits in future fiscal years.

(f) Treatment of Unused Assets. – Any assets of the QEBA plan not used to pay benefits in the current calendar year shall be used for payment of the administrative expenses of the QEBA for the current or future calendar years or shall be paid to the Retirement System as an additional employer contribution.

(g) Assets Subject to Claims of Creditors. – A payee, or a payee's beneficiary or heirs, shall have no right to, and shall have no property interest in, any assets held to support the liabilities created under this section. To the extent that any person acquires the right to receive benefits under the QEBA, that right shall be no greater than the right of any unsecured general creditor of the State of North Carolina or such other applicable employer under this section.

(h) Administration. – The QEBA shall be administered by the Board of Trustees, which shall compile and maintain all records necessary or appropriate for administration. The Board of Trustees shall have full discretionary authority to interpret, construe, and implement the QEBA and to adopt such rules and regulations as may be necessary or desirable to implement the provisions of the QEBA in accordance with section 415(m) of the Internal Revenue Code.

(i) No Assignment. – Except for the application of the provisions of G.S. 110-136 and G.S. 110-136.3, et seq., or in connection with a court-ordered equitable distribution under G.S. 50-20, any supplemental benefit under this section shall be exempt from levy and sale, garnishment, attachment, or any other process, and shall be unassignable except as specifically otherwise provided in this section.

(j) Reservation of Power to Change. – The General Assembly reserves the right at any time and, from time to time, to modify or amend, in whole or in part, any or all of the provisions of the QEBA. No member of the Retirement System and no beneficiary of such a member shall be deemed to have acquired any vested right to a supplemental payment under this section.

(k) Sunset of Eligibility to Participate in the QEBA. – No member of the North Carolina Local Governmental Employees' Retirement System who became a member of the Retirement System on or after January 1, 2015, shall be eligible to participate in the QEBA, and the Retirement System shall not pay any new member more retirement benefits

than allowed under the limitations of section 415(b) of the Internal Revenue Code. (2013-405, s. 3(b); 2015-67, s. 3(b); 2015-241, s. 30.30A(b); 2016-94, ss. 36.23(b), (d).)

Article 4.

Leaves of Absence.

§ 128-39. Leaves of absence for State officials for protracted illness or other reason.

Any elective or appointive State official may obtain leave of absence from the official's duties for protracted illness or other reason satisfactory to the Governor, for such period as the Governor may designate. The leave shall be obtained only upon application by the official and with the consent of the Governor. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not deprive the official of the benefits of cumulative sick leave to which the official may be entitled under rules and regulations adopted pursuant to G.S. 143-37 or to which he may otherwise be entitled by law. The period of leave may be extended upon application to and with the approval of the Governor if the reason for the original leave still exists, and it may be shortened if the reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which the official was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the Governor deems it necessary, the Governor may appoint any citizen of the State, without regard to residence or district, as a temporary replacement for the period of the official's leave of absence. This appointee shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed. (1941, c. 121, s. 1; 2007-432, s. 1.)

§ 128-39.1. Leaves of absence for State officials for military or naval service.

(a) Any elective or appointive State official may obtain leave of absence from the official's duties when the official enters active duty in the Armed Forces of the United States or the North Carolina National Guard as a result of being voluntarily or involuntarily activated, drafted, or otherwise called to duty. The official shall receive no salary during the period of leave. No vacancy is created by a State official obtaining a leave of absence under this section.

(b) If the official will be on active duty for a period of at least 30 days, a leave of absence may be obtained, and a temporary replacement for the official may be appointed in the following manner:

- (1) If the official is not a member of the General Assembly:
 - a. Leave of absence shall be obtained by filing a copy of the official's active duty orders with the Office of the Governor.
 - b. G.S. 128-39 shall provide the procedure for selecting a temporary replacement official.
- (2) If the official is a member of the General Assembly:
 - a. Leave of absence shall be obtained by filing a copy of the official's active duty orders with the clerk of the house of the General Assembly of which the official is a member.

- b. The Governor shall select a person to serve as the temporary replacement representative or senator. If the appropriate party executive committee recommends an eligible person within 14 days of the occurrence of the vacancy, the appointment shall be made under the same procedure as provided by G.S. 163-11. If a recommendation is not made on a timely basis, the Governor may appoint any person who is both:
1. A resident of the legislative district represented by the legislator being temporarily replaced.
 2. A member of the same political party as the legislator being temporarily replaced.

In any case, the person appointed must be eligible to serve under Section 6 of Article II of the North Carolina Constitution if a senator or Section 7 of Article II of the North Carolina Constitution if a representative.

(c) If the official will be on active duty for a period of less than 30 days, a temporary replacement official shall not be appointed, even if a leave of absence is obtained.

(d) The Governor shall appoint the temporary replacement to begin service on the date specified in writing by the official being temporarily replaced as the date the official will enter active military service, or as soon as practicable thereafter. A temporary replacement official shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced.

(e) The term of the temporary replacement official appointed under this section shall terminate as soon as any of the following occurs:

- (1) On the third day after the last day of active duty status of the official who is temporarily replaced.
- (2) The clerk of the appropriate house of the General Assembly receives written notice from the official who is temporarily replaced that the official is ready and able to resume the duties of his or her office.
- (3) The term of office of the official who is temporarily replaced expires. (2007-432, s. 2; 2011-183, s. 98; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 128-40. Leaves of absence for county officials for protracted illness or other reason.

Any elective or appointive county official may obtain leave of absence from the official's duties for protracted illness or other reason satisfactory to the board of county commissioners of his county, for such period as the board of county commissioners may designate. The leave shall be obtained only upon application by the official and with the consent of the board of county commissioners. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not deprive the official of the benefits of any sick leave to which the official may be entitled by law. The period of leave may be extended upon application to and with the approval of the board of county commissioners if the reason for the original leave still exists, and it may be shortened if the reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which the official was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the board of county commissioners deems it necessary, the board may appoint

any qualified citizen of the county as a temporary replacement for the period of the official's leave of absence. This appointee shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed. (1941, c. 121, s. 2; 2007-432, s. 3.)

§ 128-41. Leaves of absence for municipal officials for protracted illness or other reason.

Any elective or appointive municipal official may obtain leave of absence from the official's duties for protracted illness or other reason satisfactory to the governing body of the municipality, for such period as the governing body may designate. The leave shall be obtained only upon application by the official and with the consent of the governing body. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not deprive the official of the benefits of any sick leave to which the official may be entitled by law. The period of leave may be extended upon application to and with the approval of the governing body of the municipality if the reason for the original leave still exists, and it may be shortened if the reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which the official was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the governing body deems it necessary, it may appoint any qualified citizen of the municipality as a temporary replacement for the period of the official's leave of absence. This appointee shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed. (1941, c. 121, s. 3; 2007-432, s. 4.)

§ 128-42. Leaves of absence for county or municipal officials for military or naval service.

(a) Any elective or appointive county or municipal official may obtain leave of absence from the official's duties when the official enters active duty in the Armed Forces of the United States or the North Carolina National Guard as a result of being voluntarily or involuntarily activated, drafted, or otherwise called to duty. The official shall receive no salary during the period of leave. No vacancy is created by a county or municipal official obtaining a leave of absence under this section.

(b) If the official will be on active duty for a period of at least 30 days, a leave of absence may be obtained, and a temporary replacement for the official may be appointed in the following manner:

- (1) Leave of absence shall be obtained by placing a copy of the official's active duty orders with the clerk.
- (2) G.S. 128-41 shall govern the procedure for selecting a temporary replacement official if the official being temporarily replaced is a municipal official; otherwise, G.S. 128-40 shall govern.

(c) If the official will be on active duty for a period of less than 30 days, a temporary replacement official shall not be appointed, even if a leave of absence is obtained.

(d) The appropriate authority under G.S. 128-40 or G.S. 128-41 shall appoint the temporary replacement to begin service on the date specified in writing by the official being

temporarily replaced as the date the official will enter active military service, or as soon as practicable thereafter. A temporary replacement official shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed.

(e) The term of the temporary replacement official appointed under this section shall terminate as soon as any of the following occurs:

- (1) On the third day after the last day of active duty status of the official who is temporarily replaced.
- (2) The clerk receives written notice from the official who is temporarily replaced that the official is ready and able to resume the duties of his or her office.
- (3) The term of office of the official who is temporarily replaced expires.

(f) As used in this section, the term "clerk" means the city clerk as defined in G.S. 160A-171 if the official being temporarily replaced is a municipal official and means the clerk to the board of county commissioners as defined in G.S. 153A-1(2) if the official being temporarily replaced is a county official. (2007-432, s. 5; 2011-183, s. 99.)