

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 544

Short Title: Disability Income/Technical Corrections.

(Public)

Sponsors: Senator Block.

Referred to: Manufacturing and Labor.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS IN THE DISABILITY INCOME PLAN OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-5(a) reads as rewritten:

"(a) Service Retirement Benefits. –

- (1) Any member may retire upon 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 90 days subsequent to the execution of 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 membership service or shall have completed 30 years of creditable service.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon 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 90 days subsequent to the execution and filing thereof, he desires to be retired.
- (4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 calendar month, not less than one day nor more than 90 days
2 subsequent to the execution and filing thereof, he desires to be retired;
3 Provided, also, any member who has met the conditions herein
4 required but does not retire, and later becomes a teacher or an
5 employee other than as a law-enforcement officer shall continue to
6 have the right to commence retirement.

- 7 (5) Any member who is eligible for and is being paid a benefit under the
8 Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106
9 shall be deemed a member in service and may not retire under the
10 provisions of this section. Any member who has made written
11 application for long-term or extended short-term benefits under the
12 Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106,
13 and who has been rejected by the Plan's Medical Board for a long-term
14 or extended short-term benefit shall have 90 days from the date of
15 notification of the rejection to convert his application to an early or
16 service retirement application, provided that the member meets the
17 eligibility requirements, effective the first day of the month following
18 the month in which short-term disability benefits ended or the first day
19 of the month following the month in which any salary continuation as
20 may be provided in G.S. 135-104 ended, whichever is later."

21 Sec. 2. G.S. 135-5(c) reads as rewritten:

22 "(c) Disability Retirement Benefits of Members ~~Retiring~~ Leaving Service Prior to
23 January 1, 1988. – The provisions of this subsection shall not be applicable to members
24 in service on or after January 1, 1988. Upon the application of a member or of his
25 employer, any member who has had five or more years of creditable service may be
26 retired by the Board of Trustees, on the first day of any calendar month, not less than
27 one day nor more than 90 days next following the date of filing such application, on a
28 disability retirement allowance: Provided, that the medical board, after a medical
29 examination of such member, shall certify that such member is mentally or physically
30 incapacitated for the further performance of duty, that such incapacity was incurred at
31 the time of active employment and has been continuous thereafter, that such incapacity
32 is likely to be permanent, and that such member should be retired; Provided further the
33 medical board shall determine if the member is able to engage in gainful employment
34 and, if so, the member may still be retired and the disability retirement allowance as a
35 result thereof shall be reduced as in subsection (e) below. Provided further, that the
36 medical board shall not certify any member as disabled who:

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

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

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

3 Notwithstanding the requirement of five or more years of creditable service to the
4 contrary, a member who is a law-enforcement officer and who has had one year or more
5 of creditable service and becomes incapacitated for duty as the natural and proximate
6 result of an accident occurring while in the actual performance of duty, and meets all
7 other requirements for disability retirement benefits, may be retired by the Board of
8 Trustees on a disability retirement allowance.

9 Notwithstanding the foregoing to the contrary, any beneficiary who commenced
10 retirement with an early or service retirement benefit has the right, within three years of
11 his retirement, to convert to an allowance with disability retirement benefits without
12 modification of any election of optional allowance previously made; provided, the
13 beneficiary presents clear and convincing evidence that the beneficiary would have met
14 all applicable requirements for disability retirement benefits while still in service as a
15 member. The allowance on account of disability retirement benefits to the beneficiary
16 shall be retroactive to the effective date of early or service retirement.

17 Notwithstanding the foregoing, the surviving designated beneficiary of a deceased
18 member who met all other requirements for disability retirement benefits, except whose
19 death occurred before the first day of the calendar month in which the member's
20 disability retirement allowance was to be due and payable, may elect to receive the
21 reduced retirement allowance provided by a fifty percent (50%) joint and survivor
22 payment option in lieu of a return of accumulated contributions, provided the following
23 conditions apply:

- 24 (1) The member had designated as the principal beneficiary, to receive a
25 return of accumulated contributions at the time of his death, one and
26 only one person, and
- 27 (2) The member had not instructed the Board of Trustees in writing that he
28 did not wish the provision of this subsection to apply."

29 Sec. 3. G.S. 135-5(d4) reads as rewritten:

30 "(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1,
31 1982, ~~but~~ Who Left Service prior to January 1, 1988. – Upon retirement for disability, in
32 accordance with subsection (c) of this section on or after July 1, 1982 ~~but prior to January~~
33 ~~1, 1988, 1982,~~ a member who left service prior to January 1, 1988 shall receive a service
34 retirement allowance if he has qualified for an unreduced service retirement allowance;
35 otherwise the allowance shall be equal to a service retirement allowance calculated on
36 the member's average final compensation prior to his disability retirement and the
37 creditable service he would have had had he continued in service until the earliest date
38 on which he would have qualified for an unreduced service retirement allowance."

39 Sec. 4. G.S. 135-5(e) reads as rewritten:

40 "(e) Reexamination of Beneficiaries Retired for Disability. – The provisions of
41 this subsection shall be applicable to members retired on a disability retirement
42 allowance ~~prior to January 1, 1988~~ and shall not be applicable to members in service on or
43 after January 1, 1988. Once each year during the first five years following retirement of
44 a member on a disability retirement allowance, and once in every three-year period

1 thereafter, the Board of Trustees may, and upon his application shall, require any
2 disability beneficiary who has not yet attained the age of 60 years to undergo a medical
3 examination, such examination to be made at the place of residence of said beneficiary
4 or other place mutually agreed upon, by a physician or physicians designated by the
5 Board of Trustees. Should any disability beneficiary who has not yet attained the age of
6 60 years refuse to submit to at least one medical examination in any such year by a
7 physician or physicians designated by the Board of Trustees, his allowance may be
8 discontinued until his withdrawal of such refusal, and should his refusal continue for
9 one year all his rights in and to his pension may be revoked by the Board of Trustees.

10 (1) The Board of Trustees shall determine whether a disability beneficiary
11 is engaged in or is able to engage in a gainful occupation paying more
12 than the difference, as hereinafter indexed, between his disability
13 retirement allowance and the gross compensation earned as an
14 employee during the 12 consecutive months of service in the final 48
15 months prior to retirement producing the highest gross compensation
16 excluding any compensation received on account of termination. If the
17 disability beneficiary is earning or is able to earn more than the
18 difference, the portion of his disability retirement allowance not
19 provided by his contributions shall be reduced to an amount which,
20 together with the portion of the disability retirement allowance
21 provided by his contributions and the amount earnable by him shall
22 equal the amount of his gross compensation prior to retirement. This
23 difference shall be increased on January 1 each year by the ratio of the
24 Consumer Price Index to the Index one year earlier, calculated to the
25 nearest tenth of one percent (1/10th of 1%). Should the earning
26 capacity of the disability beneficiary later change, the portion of his
27 disability retirement allowance not provided by his contributions may
28 be further modified. In lieu of the reductions on account of a disability
29 beneficiary earning more than the aforesaid difference, he may elect to
30 convert his disability retirement allowance to a service retirement
31 allowance calculated on the basis of his average final compensation
32 and creditable service at the time of disability and his age at the time
33 of conversion to service retirement. This election is irrevocable.
34 Provided, the provisions of this subdivision shall not apply to
35 beneficiaries of the Law-Enforcement Officers' Retirement System
36 transferred to this Retirement System who commenced retirement on
37 and before July 1, 1981.

38 (2) Should a disability beneficiary under the age of 60 years be restored to
39 active service at a compensation not less than his average final
40 compensation, his retirement allowance shall cease, he shall again
41 become a member of the Retirement System, and he shall contribute
42 thereafter at the same rate he paid prior to disability; provided that, on
43 and after July 1, 1971, if a disability beneficiary under the age of 62
44 years is restored to active service at a compensation not less than his

1 average final compensation, his retirement allowance shall cease, he
2 shall again become a member of the Retirement System, and he shall
3 contribute thereafter at the uniform contribution rate payable by all
4 members. Any such prior service certificate on the basis of which his
5 service was computed at the time of his retirement shall be restored to
6 full force and effect, and, in addition, upon his subsequent retirement
7 he shall be credited with all his service as a member, but should he be
8 restored to active service on or after the attainment of the age of 50
9 years his pension upon subsequent retirement shall not exceed the sum
10 of the pension which he was receiving immediately prior to his last
11 restoration and the pension that he would have received on account of
12 his service since his last restoration had he entered service at the time
13 as a new entrant.

14 (3) Notwithstanding the foregoing, a member retired on a disability
15 retirement allowance who is restored to service and subsequently
16 retires on or after July 1, 1971, shall be entitled to an allowance not
17 less than the allowance described in a below reduced by the amount in
18 b below:

19 a. The allowance to which he would have been entitled if he were
20 retiring for the first time, calculated on the basis of his total
21 creditable service represented by the sum of his creditable
22 service at the time of his first retirement and his creditable
23 service after he was restored to service.

24 b. The actuarial equivalent of the retirement benefits he previously
25 received.

26 (3a) Notwithstanding the foregoing, a member retired on a disability
27 retirement allowance who is restored to service and subsequently
28 retires on or after July 1, 1985, shall be entitled to an allowance to
29 which he would have been entitled if he were retiring for the first time,
30 calculated on the basis of his total creditable service represented by the
31 sum of his creditable service at the time of his first retirement and his
32 creditable service after he was restored to service. Provided, however,
33 any election of an optional allowance cannot be changed unless the
34 member subsequently completes three years of membership service
35 after being restored to service.

36 (4) As a condition to the receipt of the disability retirement allowance
37 provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired
38 on a disability retirement allowance shall, on or before April 15 of
39 each calendar year, provide the Board of Trustees with a statement of
40 his or her income received as compensation for services, including
41 fees, commissions or similar items, and income received from
42 business, for the previous calendar year. Such statement shall be filed
43 on a form as required by the Board of Trustees.

1 The Director of the State Retirement System shall contact any State or federal
2 agency which can provide information to substantiate the statement required to be
3 submitted by this subdivision and may enter into agreements for the exchange of
4 information.

5 (5) Notwithstanding any other provisions of this Article to the contrary, a
6 beneficiary who was a beneficiary retired on a disability retirement
7 with the Law-Enforcement Officers' Retirement System at the time of
8 the transfer of law-enforcement officers employed by a participating
9 employer and beneficiaries last employed by a participating employer
10 to this Retirement System and who also was a contributing member of
11 this Retirement System at that time, shall continue to be paid his
12 retirement allowance without restriction and may continue as a
13 member of this Retirement System with all the rights and privileges
14 appendant to membership. Any beneficiary who retired on a disability
15 retirement allowance as an employee of any participating employer
16 under the Law-Enforcement Officers' Retirement System and becomes
17 employed as an employee other than as a law-enforcement officer by
18 an employer participating in the Retirement System after the
19 aforementioned transfer shall continue to be paid his retirement
20 allowance without restriction and may continue as a member of this
21 Retirement System with all the rights and privileges appendant to
22 membership until January 1, 1989, at which time his retirement
23 allowance shall cease and his subsequent retirement shall be
24 determined in accordance with the preceding subdivision (3a) of this
25 section. Any beneficiary as hereinbefore described who becomes
26 employed as a law-enforcement officer by an employer participating in
27 the Retirement System shall cease to be a beneficiary and shall
28 immediately commence membership and his subsequent retirement
29 shall be determined in accordance with subdivision (3a) of this section.

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

1 Sec. 5. G.S. 135-5(f) reads as rewritten:

2 "(f) Return of Accumulated Contributions. – Should a member cease to be a
3 teacher or State employee except by death or retirement under the provisions of this
4 Chapter, he shall upon submission of an application be paid, not earlier than 60 days
5 from the date of termination of service, his contributions, and if he has attained at least
6 five years of membership service or if termination of his membership service is
7 involuntary as certified by the employer, the accumulated regular interest thereon,
8 provided that he has not in the meantime returned to service. Upon payment of such
9 sum his membership in the System shall cease and, if he thereafter again becomes a
10 member, no credit shall be allowed for any service previously rendered except as
11 provided in G.S. 135-4, and such payment shall be in full and complete discharge of any
12 rights in or to any benefits otherwise payable hereunder. Upon receipt of proof
13 satisfactory to the Board of Trustees of the death, prior to retirement, of a member or
14 former member there shall be paid to such person or persons as he shall have nominated
15 by written designation duly acknowledged and filed with the Board of Trustees, if such
16 person or persons are living at the time of the member's death, otherwise to the
17 member's legal representatives, the amount of his accumulated contributions at the time
18 of his death, unless the beneficiary elects to receive the alternate benefit under the
19 provisions of (m) below. Notwithstanding any other provision of Chapter 135, there
20 shall be deducted from any amount otherwise payable hereunder any amount due any
21 agency or subdivision of the State by the member by reason of any outstanding
22 overpayment of salary or by reason of the embezzlement of fees collected by the
23 member for any agency or subdivision of the State; Provided that, notwithstanding any
24 other provisions of this Chapter, even if the member fails to demand the return of his
25 accumulated contributions within 90 days from the day he ceases to be a teacher or
26 State employee, any amount due such agency or subdivision by reason of any
27 outstanding overpayment of salary or embezzlement of fees shall be paid to such agency
28 or subdivision by the Retirement System upon demand; Provided, further, that such
29 agency or subdivision shall have notified the executive director of any amount so due
30 and that the Retirement System shall have no liability for amounts so deducted and
31 transmitted to such agency or subdivision nor for any failure by the Retirement System
32 for any reason to make such deductions. An extension service employee who made
33 contributions to the Local Governmental Employees' Retirement System and the
34 Teachers' and State Employees' Retirement System as a result of dual employment may
35 not be paid his accumulated contributions unless he is eligible to be paid his
36 accumulated contributions in both systems for the same period of service.

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

42 A member who is a participant or beneficiary of the Disability Income Plan of North
43 Carolina as is provided in Article 6 of this Chapter shall not be paid a return of
44 accumulated contributions, notwithstanding the member's status as an employee or

1 teacher. Notwithstanding any other provision of law to the contrary, a member who is a
2 beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of
3 this Chapter and who is receiving disability benefits under the transition provisions as
4 provided in G.S. 135-112, shall not be prohibited from receiving a return of
5 accumulated contributions as provided in this subsection."

6 Sec. 6. G.S. 135-5(l) reads as rewritten:

7 ♦ " (l) Death Benefit Plan. – There is hereby created a Group Life Insurance Plan
8 (hereinafter called the 'Plan') which is established as an employee welfare benefit plan
9 that is separate and apart from the Retirement System and under which the members of
10 the Retirement System shall participate and be eligible for group life insurance benefits.
11 Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees
12 under the Group Life Insurance Plan, of the death, in service, of a member who had
13 completed at least one full calendar year of membership in the Retirement System, there
14 shall be paid to such person as he shall have nominated by written designation duly
15 acknowledged and filed with the Board of Trustees, if such person is living at the time
16 of the member's death, otherwise to the member's legal representatives, a death benefit.
17 Such death benefit shall be equal to the greater of:

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

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

25 subject to a minimum of twenty-five thousand dollars (\$25,000) and to a maximum of
26 fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate
27 from the payment of the member's accumulated contributions under the System on his
28 death pursuant to the provisions of subsection (f) of this section. For the purpose of the
29 Plan, a member shall be deemed to be in service at the date of his death if his death
30 occurs within 180 days from the last day of his actual service.

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

34 (1) After December 31, 1968 and after he has attained age 70; or

35 (2) After December 31, 1969 and after he has attained age 69; or

36 (3) After December 31, 1970 and after he has attained age 68; or

37 (4) After December 31, 1971 and after he has attained age 67; or

38 (5) After December 31, 1972 and after he has attained age 66; or

39 (6) After December 31, 1973 and after he has attained age 65; or

40 (7) After December 31, 1978 and after he has attained age 70.

41 Notwithstanding the above provisions, the death benefit shall be payable on account
42 of the death of any member who died or dies on or after January 1, 1974, but before
43 January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or
44 she had not yet attained age 66, was at the time of death completing the work year for

1 those individuals under specific contract, or during the fiscal year for those individuals
2 not under specific contract, in which he or she attained 65, and otherwise met all
3 conditions for payment of the death benefit.

4 Notwithstanding the above provisions, the Board of Trustees may and is specifically
5 authorized to provide the death benefit according to the terms and conditions otherwise
6 appearing in this Plan in the form of group life insurance, either (i) by purchasing a
7 contract or contracts of group life insurance with any life insurance company or
8 companies licensed and authorized to transact business in this State for the purpose of
9 insuring the lives of members in service, or (ii) by establishing a separate trust fund
10 qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended,
11 for such purpose. To that end the Board of Trustees is authorized, empowered and
12 directed to investigate the desirability of utilizing group life insurance by either of the
13 foregoing methods for the purpose of providing the death benefit. If a separate trust
14 fund is established, it shall be operated in accordance with rules and regulations adopted
15 by the Board of Trustees and all investment earnings on the trust fund shall be credited
16 to such fund.

17 In administration of the death benefit the following shall apply:

- 18 (1) For the purpose of determining eligibility only, in this subsection
19 'calendar year' shall mean any period of 12 consecutive months or, if
20 less, the period covered by an annual contract of employment. For all
21 other purposes in this subsection 'calendar year' shall mean the 12
22 months beginning January 1 and ending December 31.
- 23 (2) Last day of actual service shall be:
 - 24 a. When employment has been terminated, the last day the
25 member actually worked.
 - 26 b. When employment has not been terminated, the date on
27 which an absent member's sick and annual leave expire,
28 unless he is on approved leave of absence and is in
29 service under the provisions of G.S. 135-4(h).
- 30 (3) For a period when a member is on leave of absence, his status with
31 respect to the death benefit will be determined by the provisions of
32 G.S. 135-4(h).
- 33 (4) A member on leave of absence from his position as a teacher or State
34 employee for the purpose of serving as a member or officer of the
35 General Assembly shall be deemed to be in service during sessions of
36 the General Assembly and thereby covered by the provisions of the
37 death benefit. The amount of the death benefit for such member shall
38 be the equivalent of the salary to which the member would have been
39 entitled as a teacher or State employee during the 12-month period
40 immediately prior to the month in which death occurred, not to be less
41 than twenty-five thousand dollars (\$25,000) nor to exceed fifty
42 thousand dollars (\$50,000).

43 The provisions of the Retirement System pertaining to Administration, G.S. 135-6,
44 and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

1 A member who is a beneficiary of the Disability Income Plan provided for in Article
2 6 of this Chapter shall be eligible for group life insurance benefits as provided in this
3 subsection, notwithstanding that the member is no longer an employee or teacher or that
4 the member's death occurs after the eligibility period after active service. The basis of
5 the death benefit payable hereunder shall be the higher of the death benefit computed as
6 above or a death benefit based on compensation used in computing the benefit payable
7 under ~~G.S. 135-106~~ G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage
8 post-disability increases, all subject to the maximum dollar limitation as provided
9 above. A member in receipt of benefits from the Disability Income Plan under the
10 provisions of ~~G.S. 135-112(b)~~ and (e) G.S. 135-112 whose right to a benefit accrued
11 under the former Disability Salary Continuation Plan shall not be covered under the
12 provisions of this paragraph.

13 Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this
14 subsection, of the death of a retired member of the Retirement System on or after July 1,
15 1988, there shall be paid a death benefit to the surviving spouse of the deceased retired
16 member or to the deceased retired member's legal representative if not survived by a
17 spouse; provided the retired member has elected, when first eligible, to make, and has
18 continuously made, in advance of his death required contributions as determined by the
19 Board of Trustees on a fully contributory basis, through retirement allowance
20 deductions or other methods adopted by the Board of Trustees, to a group death benefit
21 trust fund administered by the Board of Trustees separate and apart from the Retirement
22 System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit
23 shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the
24 completion of twenty-four months of contributions required under this subsection.
25 Should death occur before the completion of twenty-four months of contributions
26 required under this subsection, the deceased retired member's surviving spouse or legal
27 representative if not survived by a spouse shall be paid the sum of the retired member's
28 contributions required by this subsection plus interest to be determined by the Board of
29 Trustees."

30 Sec. 7. G.S. 135-101(3) reads as rewritten:

31 "(3) 'Benefits' shall mean the monthly disability income payments made
32 pursuant to the provisions of this Article. In the event of death ~~or~~
33 ~~termination of benefits~~ on or after the first day of a month, the monthly
34 benefit shall not be prorated and shall equal the benefits paid in the
35 previous month."

36 Sec. 8. G.S. 135-101 is amended by adding two new subdivisions to read:

37 "(20) 'Trial Rehabilitation' shall mean a return to service in any capacity,
38 if the return occurs within the waiting period as provided in G.S.
39 135-104 and shall mean a return to service in the same capacity
40 that existed prior to the disability if the return occurs within the
41 short-term disability period as provided in G.S. 135-105.

42 "(21) 'Workers' Compensation' shall mean any disability income
43 benefits provided under the North Carolina Workers'

1 Compensation Act, excluding any payments for a permanent partial
2 disability rating."

3 Sec. 9. G.S. 135-104(a) reads as rewritten:

4 "(a) A participant shall receive no benefits from the Plan for a period of 60
5 continuous calendar days from the onset of disability determined as the last actual day
6 of ~~service~~-service, the day of the disabling event if the disabling event occurred on a day
7 other than a normal workday, or the day succeeding at least 365 calendar days after
8 service as a teacher or employee, whichever is later. These 60 continuous calendar days
9 may be considered the waiting period before benefits are payable from the Plan. During
10 this waiting period, a participant may be paid such continuation of salary as provided by
11 an employer through the use of sick leave, vacation leave or any other salary
12 continuation."

13 Sec. 10. G.S. 135-105 reads as rewritten:

14 **"§ 135-105. Short-term disability benefits.**

15 (a) Any participant who becomes disabled and is no longer able to perform his
16 usual occupation may, after at least 365 calendar days succeeding his date of initial
17 employment as a teacher or employee and at least one year of contributing membership
18 service, receive a benefit commencing on the first day succeeding the waiting period;
19 provided that the participant's employer and attending physician shall certify that such
20 participant is mentally or physically incapacitated for the further performance of duty,
21 that such incapacity was incurred ~~while the participant was a teacher or employee~~ at the
22 time of active employment and has been continuous thereafter; provided further that the
23 requirement for one year of contributing membership service must have been earned
24 within 36 calendar months immediately preceding the date of disability and further,
25 salary continuation used during the period as provided in G.S. 135-104 shall count
26 toward the aforementioned one year requirement.

27 (b) The benefits as provided for in subsection (a) of this section shall commence
28 on the first day following the waiting period and shall be payable for a period of 365
29 days as long as the participant continues to meet the definition of disability. However, a
30 disabled participant may elect to receive any salary continuation as provided in G.S.
31 135-104 in lieu of short-term disability benefits; provided further, such election shall
32 not extend the 365 days duration of short-term payments. An election to receive any
33 salary continuation for any part of a given day shall be in lieu of any short-term benefit
34 otherwise payable for that day, provided further, any lump-sum payout for vacation
35 leave shall be treated as if the beneficiary or participant had exhausted the leave and
36 shall be in lieu of any short-term benefit otherwise payable."

37 (c) The monthly benefit as provided in subsection (a) of this section shall be
38 equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last
39 payable to the participant prior to the beginning of the short-term benefit period as may
40 be adjusted for percentage increases as provided under G.S. 135-108 plus fifty percent
41 (50%) of 1/12th of the annual longevity payment to which the participant would be
42 eligible, to a maximum of three thousand dollars (\$3,000) per month reduced by
43 monthly payments for Workers' Compensation to which the participant may be entitled.
44 Provided, that should a participant have earnings in an amount greater than the short-

1 term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar
2 basis by the amount that exceeds the short-term benefit.

3 (d) The provisions of this section shall be administered by the employer and
4 further, the benefits during the first six months of the short-term disability period shall
5 be the full responsibility of and paid by the employer; Provided, further, that upon the
6 completion of the initial six months of the short-term disability period, the employer
7 will continue to be responsible for the short-term benefits to the participant, however,
8 such employer shall notify the Plan on a quarterly basis of the amount of short-term
9 benefits paid and the Plan shall reimburse the employer the amounts so paid.

10 (e) During the short-term disability period, a beneficiary may return to service
11 for trial rehabilitation for periods of not greater than 40 continuous days of service.
12 Such return will not cause the beneficiary to become a participant and will not require a
13 new waiting period or short-term disability period to commence unless a different
14 incapacity occurs. The period of rehabilitative employment shall not extend the period
15 of the short-term disability benefits.

16 (f) A participant or beneficiary of short-term disability benefits or his legal
17 representative or any person deemed by the Board of Trustees to represent the
18 participant or beneficiary, or the employer of the participant or beneficiary, may request
19 the Board of Trustees to have the Medical Board make a determination of eligibility for
20 the short-term disability benefits as provided in this section or to make a preliminary
21 determination of eligibility for the long-term disability benefits as provided in G.S. 135-
22 106. A preliminary determination of eligibility for long-term disability benefits shall
23 not preclude the requirement that the Medical Board make a determination of eligibility
24 for long-term disability benefits.

25 (g) The Board of Trustees may extend the short-term disability benefits of a
26 beneficiary beyond the benefit period of 365 days for an additional period of not more
27 than 365 days; provided the Medical Board determines that the beneficiary's disability is
28 temporary and likely to end within the extended period of short-term disability benefits.
29 During the extended period of short-term disability benefits, payment of benefits shall
30 be made by the Plan directly to the beneficiary."

31 Sec. 11. G.S. 135-106 reads as rewritten:

32 "**§ 135-106. Long-term disability benefits.**

33 (a) Upon the application of a beneficiary or participant or of his legal
34 representative or any person deemed by the Board of Trustees to represent the
35 participant or beneficiary, any beneficiary or participant who has had five or more years
36 of membership service may receive long-term disability benefits from the Plan upon
37 approval by the Board of Trustees, commencing on the first day succeeding the
38 conclusion of the short-term disability period provided for in G.S. 135-105, provided
39 the beneficiary or participant makes application for such benefit within 180 days after
40 the short-term disability period ceases or after salary continuation payments cease,
41 whichever is later; Provided, that the Medical Board shall certify that such beneficiary
42 or participant is mentally or physically incapacitated for the further performance of
43 duty, that such incapacity was incurred ~~while a teacher or employee~~ at the time of active
44 employment and has been continuous thereafter, that such incapacity is likely to be

1 permanent; Provided further that the Medical Board shall not certify any beneficiary or
2 participant as disabled who is in receipt of any payments on account of the same
3 incapacity which existed when the beneficiary first established membership in the
4 Retirement System.

5 The Board of Trustees may require each beneficiary who becomes eligible to receive
6 a long-term disability benefit to have an annual medical review or examination for the
7 first five years and thereafter once every three years after the commencement of benefits
8 under this section. However, the Board of Trustees may require more frequent
9 examinations and upon the advice of the Medical Board shall determine which cases
10 require such examination. Should any beneficiary refuse to submit to any examination
11 required by this subsection or by the Medical Board, his long-term disability benefit
12 shall be suspended until he submits to an examination, and should his refusal last for
13 one year, his benefit may be terminated by the Board of Trustees. If the Medical Board
14 finds that a beneficiary is no longer mentally or physically incapacitated for the further
15 performance of duty, the Medical Board shall so certify this finding to the Board of
16 Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability
17 benefits effective on the last day of the month in which the Medical Board certifies that
18 the beneficiary is no longer disabled.

19 As to the requirement of five years of membership service, any participant or
20 beneficiary who does not have five years of membership service within the 96 calendar
21 months prior to conclusion of the short-term disability period or cessation of salary
22 continuation payments, whichever is later, shall not be eligible for long-term disability
23 benefits.

24 (b) After the commencement of benefits under this section, the benefits payable
25 under the terms of this section shall be equal to sixty-five percent (65%) of 1/12th of the
26 annual base rate of compensation last payable to the participant or beneficiary prior to
27 the beginning of the ~~long-term benefit~~ short-term disability period as may be adjusted for
28 percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of
29 1/12th of the annual longevity payment to which the participant or beneficiary would be
30 eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month
31 reduced by any primary Social Security disability benefits and by monthly payments for
32 Workers' Compensation, if any Compensation to which the participant or beneficiary may
33 be entitled. However, a disabled participant may elect to receive any salary
34 continuation as provided in G.S. 135-104 in lieu of long-term disability benefits;
35 provided such election shall not extend the first 36 consecutive calendar months of the
36 long-term disability period. An election to receive any salary continuation for any part
37 of any given day shall be in lieu of any long-term benefit payable for that day, provided
38 further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or
39 participant had exhausted the leave and shall be in lieu of any long-term benefit
40 otherwise payable. Notwithstanding the foregoing, upon the completion of four years
41 from the conclusion of the waiting period as provided in G.S. 135-104, the beneficiary's
42 benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to
43 a primary Social Security disability benefit to which the beneficiary might be entitled
44 had the beneficiary been awarded Social Security disability benefits. Provided that, in

1 any event, a beneficiary's benefit shall be reduced by an amount, as determined by the
2 Board of Trustees, equal to a primary Social Security retirement benefit to which the
3 beneficiary might be entitled.

4 Notwithstanding the foregoing, the long-term disability benefit is payable so long as
5 the beneficiary is disabled until the earliest date at which the beneficiary is eligible for
6 an unreduced service retirement allowance from the Retirement System, at which time
7 the beneficiary would receive a retirement allowance calculated on the basis of the
8 beneficiary's average final compensation at the time of disability as adjusted to reflect
9 compensation increases subsequent to the time of disability and the creditable service
10 accumulated by the beneficiary, including creditable service while in receipt of benefits
11 under the Plan.

12 (c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability
13 benefits who has earnings during the first 36 consecutive calendar months of the long-
14 term disability period shall have his long-term disability benefit reduced when the sum
15 of the net long-term disability benefit and the earnings equals one hundred percent
16 (100%) of monthly compensation adjusted as provided under G.S. 135-108. The long-
17 term disability benefit shall be reduced dollar-for-dollar for the amount of earnings in
18 excess of the one hundred percent (100%) monthly limit. Provided further, after the
19 first 36 months of the long-term disability period, a beneficiary's earnings will not result
20 in any reduction of the monthly long-term disability benefit until the monthly earnings
21 equal the net monthly long-term disability benefit. The monthly long-term disability
22 benefit will be reduced by one dollar (\$1.00) for each three dollars (\$3.00) of monthly
23 earnings in excess of the net long-term disability benefit until the sum of the monthly
24 net long-term benefit and monthly earnings reach one hundred percent (100%) of
25 monthly compensation adjusted as provided under G.S. 135-108, at which point the
26 monthly long-term disability benefit shall be reduced dollar-for-dollar for the amount of
27 earnings in excess of the one hundred percent (100%) monthly limit. Any beneficiary
28 exceeding the earnings limitations shall notify the Plan by the fifth of the month
29 succeeding the month in which the earnings were received of the amount of earnings in
30 excess of the limitations herein provided. Failure to report excess earnings may result
31 in a suspension or termination of benefits as determined by the Board of Trustees."

32 Sec. 12. G.S. 135-112(b) reads as rewritten:

33 "(b) All benefit recipients under the former Disability Salary Continuation Plan
34 provided for in G.S. 135-34 and the rules adopted thereto shall become beneficiaries
35 under this Plan under the same provisions and conditions including the benefit amounts
36 payable as were provided under the former Disability Salary Continuation Plan. Any
37 benefit recipient under the former Disability Salary Continuation Plan who returns to
38 service on or after January 1, 1988, who subsequently becomes disabled due to the same
39 disabling condition within 90 days after restoration to service shall not become a
40 participant of the Disability Income Plan but shall be entitled to a restoration of the
41 disability benefit under the same provisions and conditions, including the benefit
42 amounts payable, as were provided under the former Disability Salary Continuation
43 Plan, and shall be entitled to make application for disability retirement benefits under

1 the Retirement System under the same provisions and conditions as were provided
2 members whose service terminated prior to January 1, 1988."

3 Sec. 13. Section 29(g) of Chapter 738 of the 1987 Session Laws reads as
4 rewritten:

5 "(g) G.S. 135-5(e) and ~~G.S. 128-7(e)~~ 128-27(e) are amended by adding a new
6 subdivision to the end of each designated as (6) to read:

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

22 Sec. 14. This act shall become effective July 1, 1989, except that section 13
23 is effective upon ratification. ♦