

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 358

Short Title: Retirement Technical Corrections.-AB (Public)

Sponsors: Representatives Moffitt, Blust, Warren, and Collins (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: State Personnel, if favorable, Finance, if favorable, Appropriations.

March 21, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE STATUTES
3 AFFECTING THE STATE RETIREMENT SYSTEMS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** G.S. 143-166.30(d) reads as rewritten:

6 "(d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. – As of
7 January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter
8 called the "Plan," established for the benefit of all law-enforcement officers employed by the
9 State, who shall be participants. The Board of Trustees of the State Retirement System shall
10 administer the Plan and shall, under the terms and conditions otherwise appearing herein,
11 provide Plan benefits either (i) by establishing a separate trust fund in conformance with
12 Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as
13 amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same
14 benefits for participants. The Plan shall be separate and apart from any retirement systems.

15 In addition to the contributions transferred from the Law-Enforcement Officers' Retirement
16 System and the contributions otherwise provided for in this Article, participants may make
17 voluntary contributions to the Plan to be credited to the designated individual accounts of
18 participants; provided, in no instance shall the total contributions by a participant exceed ten
19 percent (10%) of a participant's compensation within any calendar year. participants.

20 All contributions to the Plan shall be credited to the individual accounts of participants, and
21 except as provided in subsection (g1) of this section, shall be fully and immediately vested in
22 the name of the participant, and shall be invested according to each participant's election, as
23 provided by the Board of Trustees, including but not limited to time deposits, and both fixed
24 and variable investments. The Plan may provide for loans to participants, at reasonable rates of
25 interest to be charged, from participants' individual accounts, and may provide for withdrawal
26 of contributions on account of hardship.

27 The benefit to a participant in the Plan shall be either a lump-sum distribution or a
28 distribution in periodic installments of the participant's account payable under retirement,
29 disability, or termination of employment. Upon the death of a participant there shall be paid the
30 same lump-sum distribution or periodic installments to the surviving spouse of the participant
31 or otherwise to the participant's estate; provided, should a participant instruct the Board of
32 Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then
33 the benefits shall be paid to the person or persons as the participant may name for this purpose.

34 Upon retirement, a participant in the Plan may elect to transfer any portion of his eligible
35 accumulated contributions, not including any Roth after-tax contributions and the earnings



1 thereon, to the Teachers' and State Employees' Retirement System and receive, in addition to
2 his basic service, early or disability retirement allowance a special retirement allowance which
3 shall be based on his eligible accumulated account balance at the date of the transfer of the
4 assets."

5 **SECTION 1.(b)** G.S. 143-166.50(e) reads as rewritten:

6 "(e) Supplemental Retirement Income Plan for Local Governmental Law-Enforcement
7 Officers. – As of January 1, 1986, all law-enforcement officers employed by a local
8 government employer, are participating members of the Supplemental Retirement Income Plan
9 as provided by Article 5 of Chapter 135 of the General Statutes. In addition to the contributions
10 transferred from the Law-Enforcement Officers' Retirement System, participants may make
11 voluntary contributions to the Supplemental Retirement Income Plan to be credited to the
12 designated individual accounts of participants; ~~provided, in no instance shall the total~~
13 ~~contributions by a participant exceed ten percent (10%) of a participant's compensation within~~
14 ~~any calendar year.~~ participants. From July 1, 1987, until July 1, 1988, local government
15 employers of law enforcement officers shall contribute an amount equal to at least two percent
16 (2%) of participating local officers' monthly compensation to the Supplemental Retirement
17 Income Plan to be credited to the designated individual accounts of participating local officers;
18 and on and after July 1, 1988, local government employers of law enforcement officers shall
19 contribute an amount equal to five percent (5%) of participating local officers' monthly
20 compensation to the Supplemental Retirement Income Plan to be credited to the designated
21 individual accounts of participating local officers.

22 Additional contributions shall also be made to the individual accounts of all participants in
23 the Plan, except for Sheriffs, on a per capita equal-share basis from the sum of one dollar and
24 twenty-five cents (\$1.25) for each cost of court collected under G.S. 7A-304.

25 Upon retirement, a participant in the Plan may elect to transfer any portion of his eligible
26 accumulated contributions, not including any Roth after-tax contributions and the earnings
27 thereon, to the Local Governmental Employees' Retirement System and receive, in addition to
28 his basic service, early or disability retirement allowance a special retirement allowance which
29 shall be based on his eligible accumulated account balance at the date of the transfer of the
30 assets."

31 **SECTION 2.(a)** G.S. 128-26(a) reads as rewritten:

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

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

41 A participating employer may allow prior service credit to any of its employees on account
42 of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such
43 service prior to the establishment of the Teachers' and State Employees' Retirement System on
44 July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum
45 an amount calculated on the basis of compensation the employee earned when the employee
46 first entered membership and the employee contribution rate at that time together with interest
47 thereon from year of first membership to year of payment shall be one half of the calculated
48 cost.

49 (a1) With respect to a member retiring on or after July 1, 1967, the governing board of a
50 participating unit may allow credit for any period of military service in the Armed Forces of the
51 United States if the person returned to the service of the person's employer within two years

1 after having been honorably discharged, or becoming entitled to be discharged, released, or
2 separated from such the Armed Forces of the United States; provided that, notwithstanding the
3 above provisions, any member having credit for not less than 10 years of otherwise creditable
4 service may be allowed credit for such military services which are not creditable in any other
5 governmental retirement system; provided further, that a member will receive credit for
6 military service under the provisions of this paragraph only if the member submits satisfactory
7 evidence of the military service claimed and the participating unit of which the member is an
8 employee agrees to grant credit for such military service prior to January 1, 1972.

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

- 19 (1) ~~The member returns to service, with the employer by whom the member was~~
20 ~~employed when the member entered military service, within a period of two~~
21 ~~years after the member is first eligible to be separated or released from such~~
22 ~~military service under other than dishonorable conditions.~~
- 23 (2) ~~The member is in service, with the employer by whom the member was~~
24 ~~employed when the member entered military service, for a period of not less~~
25 ~~than 10 years after the member is separated or released from the Armed~~
26 ~~Forces of the United States under other than dishonorable conditions.~~
- 27 (1) The member did not, prior to leaving for military service, provide clear
28 written notice of an intent not to return to work after military service.
- 29 (2) The member was discharged from uniformed service and returned from the
30 leave of absence for uniformed service to membership service in this system
31 within the time limit mandated by federal law for reporting back to work.
- 32 (3) The period of uniformed service, for which additional service credit is
33 sought, has been verified by suitable documentation and is not eligible for
34 receipt of benefits under any other retirement system or pension plan.
- 35 (4) All service credit forfeited by a refund pursuant to the provisions of
36 G.S. 128-27(f) has been purchased.

37 The uniformed service credit allowed under this subsection shall be limited to a maximum
38 of five years unless otherwise specifically exempted from that durational limitation by federal
39 law. The salary or compensation of such an employee during the period of qualifying military
40 service shall be deemed to be that salary or compensation the employee would have received
41 but for the period of service had the employee remained continuously employed, if the
42 determination of that salary or compensation is reasonably certain. If the determination of the
43 salary or compensation is not reasonably certain, then it shall be deemed to be that employee's
44 average rate of compensation during the 12-month period immediately preceding the period of
45 service.

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

51 **SECTION 3.(a)** G.S. 135-1(14) reads as rewritten:

1 "(14) "Membership service" shall mean service as a teacher or State employee
2 rendered while a member of the Retirement ~~System~~System or membership
3 service in a North Carolina Retirement System that has been transferred into
4 this system."

5 **SECTION 3.(b)** G.S. 128-21(14) reads as rewritten:

6 "(14) "Membership service" shall mean service as an employee rendered while a
7 member of the Retirement ~~System~~System or membership service in a North
8 Carolina Retirement System that has been transferred into this system."

9 **SECTION 4.(a)** G.S. 135-1 reads as rewritten:

10 "(20) "Retirement" under this Article means the commencement of monthly
11 retirement benefits along with termination of employment and the complete
12 separation from active service with no intent or agreement, express or
13 implied, to return to service. A retirement allowance under the provisions of
14 this ~~Chapter~~Article may only be granted upon retirement of a member. In
15 order for a member's retirement to become effective in any month, the
16 member must ~~render no service, perform no work for an employer,~~ including
17 part-time, temporary, substitute, or contractor ~~service, work,~~ at any time
18 during the six months immediately following the effective date of
19 retirement. For purposes of this subdivision, ~~service-working~~ as a member of
20 a school board or as an unpaid bona fide volunteer in a local school
21 administrative unit shall not be considered service. A member who is a
22 full-time faculty member of The University of North Carolina may effect a
23 retirement allowance under this ~~Chapter~~Article, notwithstanding the
24 six-month requirement above, provided the member immediately enters the
25 University's Phased Retirement Program for Tenured Faculty as that
26 program existed on May 25, 2011."

27 **SECTION 4.(b)** G.S. 128-21 reads as rewritten:

28 "(19) "Retirement" under this Article shall mean ~~withdrawal~~the commencement
29 of monthly retirement benefits, along with the termination of employment
30 and the complete separation from active service with a retirement allowance
31 granted under the provisions of this Article. ~~no intent or agreement,~~
32 ~~expressed or implied, to return to service.~~ A retirement allowance under the
33 provisions of this ~~Chapter~~Article may only be granted upon retirement of a
34 member. In order for a member's retirement to become effective in any
35 month, the member must ~~render no service, perform no work for a~~
36 ~~participating employer,~~ including ~~part-time, part-time,~~ temporary, substitute,
37 or contractor ~~service, work,~~ at any time during the same month immediately
38 following the effective ~~date~~first day of retirement."

39 **SECTION 4.(c)** G.S. 135-53(16) reads as rewritten:

40 "(16) "Retirement" under this Article shall mean the ~~withdrawal~~commencement
41 of monthly retirement benefits, along with the termination of employment
42 and the complete separation from active service with a retirement allowance
43 granted under the provisions of this Chapter. ~~no intent or agreement,~~
44 ~~expressed or implied, to return to service.~~ A retirement allowance under the
45 provisions of this Article may only be granted upon retirement of a member.
46 In order for a member's retirement to become effective in any month, the
47 member must ~~render no service~~perform no work, including part-time,
48 temporary, substitute, or contractor work, at any time during ~~that month~~the
49 same month immediately following the effective first day of retirement."

50 **SECTION 4.(d)** G.S. 120-4.8 reads as rewritten:

1 "(14) "Retirement" under this Article means the withdrawal commencement of
2 monthly retirement benefits, along with the termination of employment and
3 the complete separation from active service with a retirement allowance
4 granted under the provisions of this Article. no intent or agreement,
5 expressed or implied, to return to service. A retirement allowance under the
6 provisions of this Article may only be granted upon retirement of a member.
7 In order for a member's retirement to become effective in any month, the
8 member must ~~render no service~~ perform no work, including part-time,
9 temporary, substitute, or contractor work, at any time during that month. the
10 same month immediately following the effective first day of retirement."

11 **SECTION 5.** G.S. 135-5.1(b) reads as rewritten:

12 "(b) Participation in the Optional Retirement Program shall be governed as follows:

13 ...

14 (2) Eligible employees initially appointed on or after July 1, 1985, shall at the
15 same time of entering upon eligible employment elect (i) to join the
16 Retirement System in accordance with the provisions of law applicable
17 thereto or (ii) to participate in the Optional Retirement Program. This
18 election shall be in writing and filed with the Retirement System and with
19 the employing institution and shall be effective as of the date of entry into
20 eligible service. For purposes of this provision, the Optional Retirement
21 Program shall be permitted to file individual election forms with the
22 Retirement System using electronic transmission.

23 "

24 **SECTION 6.** G.S. 135-101(3) reads as rewritten:

25 "(3) "Benefits" shall mean the monthly disability income payments made
26 pursuant to the provisions of this Article. In the event of death on or after the
27 first day of a month, ~~or in the~~ monthly benefit shall not be prorated unless
28 the death occurs during the final month of the approved benefit period, in
29 which case the benefit shall not exceed the last date of approval. In the event
30 the short-term disability benefit ends on or after the first day of a month
31 where the beneficiary is eligible and applies for an early service or a service
32 retirement allowance the first of the following month, the monthly benefit
33 shall not be ~~prorated and shall equal the benefits paid in the previous month.~~
34 prorated."

35 **SECTION 7.** G.S. 135-106(d) reads as rewritten:

36 "(d) Notwithstanding the foregoing, a participant or beneficiary who has applied for and
37 been approved by the Medical Board for long-term disability benefits may make an irrevocable
38 election, within 90 days from the date of notification of such approval, and prior to receipt of
39 any long-term disability benefit payments, to forfeit all pending and accrued rights to the
40 long-term disability benefit including any ancillary benefits and retire on an early service
41 retirement ~~allowance~~ allowance, effective with the first day of the month following the end of
42 the short-term period, or receive a return of accumulated contributions from the Retirement
43 System."

44 **SECTION 8.(a)** Article 6 of Chapter 135 of the General Statutes is amended by
45 adding a new section to read:

46 "**§ 135-111.1. Improper receipt of decedent's Disability Income Plan allowance.**

47 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,
48 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's
49 Disability Income Plan allowance and the person (i) knows that he or she is not entitled to the
50 decedent's Disability Income Plan allowance, (ii) receives the benefit at least two months after

1 the date of the beneficiary's death, and (iii) does not attempt to inform this Retirement System
2 of the beneficiary's death."

3 **SECTION 8.(b)** G.S. 135-118.11 reads as rewritten:

4 **"§ 135-18.11. Improper receipt of decedent's retirement allowance or disability benefit.**

5 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,
6 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's
7 retirement allowance ~~or a decedent's monthly benefit under the Disability Income Plan of North~~
8 ~~Carolina~~ and the person (i) knows that he or she is not entitled to the decedent's retirement
9 allowance or the monthly disability benefit, (ii) receives the benefit at least two months after
10 the date of the retiree's or beneficiary's death, and (iii) does not attempt to inform this
11 Retirement System of the retiree's or beneficiary's death."

12 **SECTION 8.(c)** G.S. 128-38.5 reads as rewritten:

13 **"§ 128-38.5. Improper receipt of decedent's retirement allowance.**

14 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,
15 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's
16 retirement allowance and the person (i) knows that he or she is not entitled to the decedent's
17 retirement allowance, (ii) receives the benefit at least two months after the date of the retiree's
18 or beneficiary's death, and (iii) does not attempt to inform this Retirement System of the
19 retiree's or beneficiary's death."

20 **SECTION 8.(d)** G.S. 135-75.2 reads as rewritten:

21 **"§ 135-75.2. Improper receipt of decedent's retirement allowance.**

22 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,
23 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's
24 retirement allowance and the person (i) knows that he or she is not entitled to the decedent's
25 retirement allowance, (ii) receives the benefit at least two months after the date of the retiree's
26 or beneficiary's death, and (iii) does not attempt to inform this Retirement System of the
27 retiree's or beneficiary's death."

28 **SECTION 8.(e)** G.S. 120-4.34 reads as rewritten:

29 **"§ 120-4.34. Improper receipt of decedent's retirement allowance.**

30 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,
31 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's
32 retirement allowance and the person (i) knows that he or she is not entitled to the decedent's
33 retirement allowance, (ii) receives the benefit at least two months after the date of the retiree's
34 or beneficiary's death, and (iii) does not attempt to inform this Retirement System of the
35 retiree's or beneficiary's death."

36 **SECTION 9.** G.S. 143-166.2(d) reads as rewritten:

37 "(d) The term "law-enforcement officer", "officer", or "fireman" shall mean a sheriff and
38 all law-enforcement officers employed full-time, permanent part-time, or temporarily by a
39 sheriff, the State of North Carolina or any county or municipality thereof, whether paid or
40 unpaid; and all full-time custodial employees and probation and parole officers of the Division
41 of Adult Correction of the Department of Public Safety; and all full time institutional and
42 full-time, permanent part-time, and temporary detention employees of the Division of Juvenile
43 Justice of the Department of Public Safety and full-time, permanent part-time, and temporary
44 detention officers employed by any sheriff, county or municipality, whether paid or unpaid.
45 The term "firemen" shall mean both "eligible firemen" as defined in ~~G.S. 58-86-25~~
46 G.S. 58-86-2, notwithstanding any age requirements set out in that section, and all full-time,
47 permanent part-time and temporary employees of the Division of Forest Resources, Department
48 of Agriculture and Consumer Services, during the time they are actively engaged in
49 fire-fighting activities; and shall mean all full-time employees of the North Carolina
50 Department of Insurance during the time they are actively engaged in fire-fighting activities,
51 during the time they are training fire fighters or rescue squad workers, and during the time they

1 are engaged in activities as members of the State Emergency Response Team, when the Team
2 has been activated; and shall mean all otherwise eligible persons who, while actively engaged
3 as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue instructor
4 outside their own department or squad. The term "rescue squad worker" shall mean a person
5 who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in
6 difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care
7 or emergency medical services. In addition, this person must belong to an organized rescue
8 squad which is eligible for membership in the North Carolina Association of Rescue Squads,
9 and Emergency Medical Services, Inc., and the person must have attended a minimum of 36
10 hours of training ~~and meetings~~ in the last calendar year. Each rescue squad belonging to the
11 North Carolina Association of Rescue Squads, and Emergency Medical Services, Inc., must file
12 a roster of those members meeting the above requirements with the State Treasurer on or about
13 ~~January 1~~ January 31 of each year, and this roster must be certified to by the secretary of said
14 association. In addition, the term "rescue squad worker" shall mean a member of an ambulance
15 service certified by the Department of Health and Human Services pursuant to Article 7 of
16 Chapter 131E of the General Statutes. The Department of Health and Human Services shall
17 furnish a list of ambulance service members to the State Treasurer on or about ~~January 1~~
18 January 31 of each year. The term "Civil Air Patrol members" shall mean those senior members
19 of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified
20 pursuant to G.S. 143B-1031. The term "fireman" shall also mean county fire marshals when
21 engaged in the performance of their county duties. The term "rescue squad worker" shall also
22 mean county emergency services coordinators when engaged in the performance of their
23 county duties."

24 **SECTION 10.** This act becomes effective July 1, 2013.