

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 977

Short Title: Admin. Changes Ret. System/Treasurer - 2018.-AB (Public)

Sponsors: Representatives Ross, McNeill, and Dulin (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Pensions and Retirement

May 23, 2018

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING AND ADMINISTRATIVE CHANGES TO LAWS RELATING TO THE STATE TREASURER, TO THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, TO THE LOCAL GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM LAWS, TO THE STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES, AND TO RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-5.4 reads as rewritten:

"§ 135-5.4. Optional retirement program for State-funded community colleges.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the North Carolina Community Colleges System, ("System"). The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of the presidents of the community colleges all of whom are appointed after the implementation of the Program and who elect membership as required by subsection (b) of this ~~section~~section on or before June 30, 2018. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf.

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

- (1) Employees initially appointed on or after the implementation of the Optional Retirement Program and on or before June 30, 2018, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into eligible service.
- (2) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.
- (3) No election by an eligible employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a contract or contracts or trust participation under the Program.



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- 1 (4) If any participant having less than five years coverage under the Optional
 2 Retirement Program leaves the employ of the System and either retires or
 3 commences employment with an employer not having a retirement program
 4 with the same company underwriting the participant's annuity contract,
 5 regardless of whether the annuity contract is held by the participant, a trust, or
 6 the Retirement System, the participant's interest in the Optional Retirement
 7 Program attributable to contributions of the employing institution shall be
 8 forfeited and shall either (i) be refunded to the employing institution and
 9 forthwith paid by it to the Retirement System and credited to the pension
 10 accumulation fund or (ii) be paid directly to the Retirement System and
 11 credited to the pension accumulation fund.

12"

13 **SECTION 2.(a)** G.S. 135-18.10 reads as rewritten:

14 **"§ 135-18.10. Forfeiture of retirement benefits for certain felonies committed while serving
 15 as elected government official.**

16 (a) Except as provided in G.S. 135-4(gg), the Board of Trustees shall not pay any
 17 retirement benefits or allowances, except for a return of member contributions plus interest, to
 18 any member who is convicted of any felony under the federal laws listed in subsection (b) of this
 19 section or the laws of this State listed in subsection (c) of this section if all of the following apply:

- 20 (1) The federal or State offense is committed while serving as an elected
 21 government official.
 22 (2) The conduct on which the federal or State offense is based is directly related
 23 to the member's service as an elected government official.

24 ...

25 (c) The offenses under the laws of this State covered by this section are as follows:

- 26 (1) A felony violation of any of the following provisions of the General Statutes:
 27 a. Article 29, 30, or 29 of Chapter 14, Bribery.
 28 b. Article 30 of Chapter 14, Obstructing Justice.
 29 c. Article 30A of Chapter 14 of the General Statutes (Relating to bribery,
 30 obstructing justice, and secret listening) or 14, Secret Listening.
 31 d. G.S. 14-228 (Buying G.S. 14-228, Buying and selling offices),
 32 or offices.
 33 e. Part 1 of Article 14 of Chapter 120 of the General Statutes (Code of
 34 Legislative Ethics); 120, Code of Legislative Ethics.
 35 f. Part 1 of Article 21 or of Chapter 163A, Absentee Ballot.
 36 g. Article 22 of Chapter 163A of the General Statutes (Relating to
 37 absentee ballots, corrupt practices and other offenses against the
 38 elective franchise, and regulating of contributions and expenditures in
 39 political campaigns); 163A, Regulation of Election Campaigns –
 40 Corrupt Practices and Other Offenses Against the Elective Franchise.
 41 h. G.S. 14-90, Embezzlement of property received by virtue of office or
 42 employment.
 43 i. G.S. 14-91, Embezzlement of State property by public officers and
 44 employees.
 45 j. G.S. 14-92, Embezzlement of funds by public officers and trustees.
 46 k. G.S. 14-99, Embezzlement of taxes by officers.
 47 l. Subsection (a) of G.S. 14-454.1, Accessing government computers.
 48 m. Subsection (a1) of G.S. 14-455, Damaging computers, computer
 49 programs, computer systems, computer networks, and resources.
 50 n. G.S. 14-456.1, Denial of government computer services to an
 51 authorized user.

- 1 (2) Perjury or false information as follows:
- 2 a. Perjury committed under G.S. 14-209 in falsely denying the
- 3 commission of an act that constitutes an offense within the purview of
- 4 an offense listed in subdivision (1) of subsection (c) of this section.
- 5 b. Subornation of perjury committed under G.S. 14-210 in connection
- 6 with the false denial of another as specified by subdivision (2) of this
- 7 subsection.
- 8 c. Perjury under Article 23 of Chapter 163A of the General Statutes.

9 (d) All monies forfeited under this section shall be remitted to the Civil Penalty and
 10 Forfeiture Fund."

11 **SECTION 2.(b)** G.S. 128-38.4 reads as rewritten:

12 **"§ 128-38.4. Forfeiture of retirement benefits for certain felonies committed while serving**
 13 **as elected government official.**

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

- 18 (1) The federal or State offense is committed while serving as an elected
- 19 government official.
- 20 (2) The conduct on which the federal or State offense is based is directly related
- 21 to the member's service as an elected government official.

22 ...

23 (c) The offenses under the laws of this State covered by this section are as follows:

- 24 (1) A felony violation of any of the following provisions of the General Statutes:
- 25 a. Article 29, 30, or 29 of Chapter 14, Bribery.
- 26 b. Article 30 of Chapter 14, Obstructing Justice.
- 27 c. Article 30A of Chapter 14 of the General Statutes (Relating to bribery,
 28 obstructing justice, and secret listening) or 14, Secret Listening.
- 29 d. G.S. 14-228 (Buying G.S. 14-228, Buying and selling offices),
 30 or offices.
- 31 e. Part 1 of Article 14 of Chapter 120 of the General Statutes (Code of
 32 Legislative Ethics), 120, Code of Legislative Ethics.
- 33 f. Part 1 of Article 21 of Chapter 163A, Absentee Ballot.
- 34 g. Article 22 of Chapter 163A of the General Statutes (Relating to
 35 absentee ballots, corrupt practices and other offenses against the
 36 elective franchise, and regulating of contributions and expenditures in
 37 political campaigns), 163A, Regulation of Election Campaigns –
 38 Corrupt Practices and Other Offenses Against the Elective Franchise.
- 39 h. G.S. 14-90, Embezzlement of property received by virtue of office or
 40 employment.
- 41 i. G.S. 14-91, Embezzlement of State property by public officers and
 42 employees.
- 43 j. G.S. 14-92, Embezzlement of funds by public officers and trustees.
- 44 k. G.S. 14-99, Embezzlement of taxes by officers.
- 45 l. Subsection (a) of G.S. 14-454.1, Accessing government computers.
- 46 m. Subsection (a1) of G.S. 14-455, Damaging computers, computer
 47 programs, computer systems, computer networks, and resources.
- 48 n. G.S. 14-456.1, Denial of government computer services to an
 49 authorized user.

50 (2) Perjury or false information as follows:

- 1 a. Perjury committed under G.S. 14-209 in falsely denying the
2 commission of an act that constitutes an offense within the purview of
3 an offense listed in subdivision (1) of subsection (c) of this section.
4 b. Subornation of perjury committed under G.S. 14-210 in connection
5 with the false denial of another as specified by subdivision (2) of this
6 subsection.
7 c. Perjury under Article 22 of Chapter 163A of the General Statutes.
8 (d) All monies forfeited under this section shall be remitted to the Civil Penalty and
9 Forfeiture Fund."

10 **SECTION 2.(c)** G.S. 161-50.4 is amended by adding a new subsection to read:

11 "(c) A county register of deeds who is otherwise eligible to receive a monthly pension
12 under this Article shall cease to be eligible upon forfeiture of any retirement benefits under
13 G.S. 128-38.4 or G.S. 128-38.4A."

14 **SECTION 2.(d)** G.S. 161-50.5 is amended by adding a new subsection to read:

15 "(d1) Monthly pensions payable under this Article will cease upon the ineligibility of a
16 pensioner under G.S. 151-50.4(c) due to the forfeiture of any retirement benefits under
17 G.S. 128-38.4 or G.S. 128-38.4A."

18 **SECTION 2.(e)** This section is effective when it becomes law. Subsections (a) and
19 (b) of this section apply to offenses committed on or after that date. Subsections (c) and (d) of
20 this section apply to the forfeiture of any retirement benefits under G.S. 128-38.4 or
21 G.S. 128-38.4A occurring on or after that date.

22 **SECTION 3.(a)** G.S. 135-5.3(f) reads as rewritten:

23 "(f) The board of directors of a charter school may elect to cease participation in the
24 Retirement System for all of its employees by following the procedure in G.S. 135-8(i).
25 Notwithstanding the requirement under G.S. 135-8(i)(6) that a charter school's withdrawal
26 liability be paid in a lump sum, if the withdrawal liability of a charter school as calculated under
27 G.S. 135-8(i)(5) is greater than two million dollars (\$2,000,000), the Board of Trustees may
28 allow a charter school to pay the required lump sum amount on an installment payment plan that
29 meets the following requirements:

- 30 (1) Fifty percent (50%) of the withdrawal liability must be paid within 90 days of
31 the complete withdrawal date.
32 (2) The remaining fifty percent (50%) of the withdrawal liability shall be made in
33 no greater than 36 equal monthly payments.

34 Notwithstanding G.S. 135-8(i)(2), the complete withdrawal by a charter school that is under
35 an approved installment payment plan shall be the date of the Board of Trustees approval of the
36 installment payment plan. All provisions of this Article relating to the complete withdrawal of
37 an employer from the Retirement System shall be applicable to the charter school as of that date.

38 The Retirement System shall have a lien upon the real property of a charter school that has
39 received approval under this subsection from the Board of Trustees to pay the lump sum amount
40 required under G.S. 135-8(i)(6) on installment at the time that the installment agreement is
41 entered into and in the amount of the total withdrawal liability owed by the charter school. This
42 lien shall attach to the real property upon the approval of the installment payment plan by the
43 Board of Trustees and shall be perfected upon filing in the office of the clerk of superior court in
44 each county in which the real property is situated. The priority of the lien shall be superior to all
45 nongovernmental liens and rights, whether such liens and rights are prior or subsequent to the
46 lien. The Retirement System may enforce the lien by judicial foreclosure as provided in Article
47 29A of Chapter 1 of the General Statutes."

48 **SECTION 3.(b)** This section is effective when it becomes law and applies to charter
49 schools electing to cease participation in the Teachers' and State Employees' Retirement System
50 on or after that date. Priority of the lien over nongovernmental liens and rights, created under

1 subsection (a) of this section, shall apply to only to nongovernmental liens and rights that have
2 attached to the applicable property on or after the effective date of this section.

3 **SECTION 4.(a)** G.S. 147-86.57(3) reads as rewritten:

4 "(3) "Investment" means a commitment or contribution of funds or property,
5 whatever the source, a loan or other extension of credit, and the entry into or
6 renewal of a contract for goods or services. It does not include ~~indirect~~
7 beneficial ownership through index funds, commingled funds, limited
8 partnerships, derivative instruments, or the like."

9 **SECTION 4.(b)** G.S. 147-86.42(5a) reads as rewritten:

10 "(5a) "Investment" means a commitment or contribution of funds or property,
11 whatever the source, or a loan or other extension of credit. It does not include
12 ~~indirect~~ beneficial ownership through index funds, commingled funds, limited
13 partnerships, derivative instruments, or the like."

14 **SECTION 5.(a)** G.S. 143B-426.24 is amended by adding a new subsection to read:

15 "(h2) The administrative costs of the North Carolina Public Employee Deferred
16 Compensation Plan may be charged to members or deducted from members' accounts in
17 accordance with nondiscriminatory procedures established by the Department of State Treasurer
18 and Board of Trustees."

19 **SECTION 5.(b)** G.S. 115C-341.2 is amended by adding a new subsection to read:

20 "(c) The administrative costs of the North Carolina Public School Teachers' and
21 Professional Educators' Investment Plan may be charged to members or deducted from members'
22 accounts in accordance with nondiscriminatory procedures established by the Department of
23 State Treasurer and Board of Trustees."

24 **SECTION 6.(a)** G.S. 159-3 is amended by adding a new subsection to read:

25 "(g) An individual serving on the Local Government Commission shall be immune
26 individually from civil liability for monetary damages, except to the extent covered by insurance,
27 for any act or failure to act arising out of that service, except where any of the following apply:

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

36 **SECTION 6.(b)** G.S. 159D-38 is amended by adding a new subsection to read:

37 "(f) An individual serving on the board of directors for the agency shall be immune
38 individually from civil liability for monetary damages, except to the extent covered by insurance,
39 for any act or failure to act arising out of that service, except where any of the following apply:

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

48 **SECTION 7.** Article 3B of Chapter 135 of the General Statutes is amended by adding
49 a new section to read:

50 "§ 135-48.4. Conflict with federal law.

1 If any provision of this Article is in conflict with applicable federal law, federal law shall
 2 control to the extent of the conflict."

3 **SECTION 8.(a)** G.S. 135-48.23 reads as rewritten:

4 **"§ 135-48.23. Executive Administrator.**

5 (a) The Plan shall have an Executive Administrator and a Deputy Executive
 6 Administrator. ~~Administrator.~~ The Executive Administrator and the Deputy Executive
 7 Administrator positions are position is exempt from the provisions of Chapter 126 of the General
 8 Statutes as provided in G.S. 126-5(c1).

9 (b) The Executive Administrator shall be appointed by the State Treasurer. The term of
 10 employment and salary of the Executive Administrator shall be set by the State Treasurer.
 11 The Executive Administrator may be removed from office by the State Treasurer, and any
 12 vacancy in the office of Executive Administrator may be filled by the State Treasurer.

13 ~~(c) The State Treasurer shall appoint the Deputy Executive Administrator. The term of~~
 14 ~~employment and salary of the Deputy Executive Administrator shall be set by the State Treasurer.~~
 15 ~~The Deputy Executive Administrator may be removed from office by the State Treasurer. Any~~
 16 ~~vacancy in the office of the Deputy Executive Administrator may be filled by the State Treasurer.~~

17 (c1) The State Treasurer may employ such clerical and professional staff, and such other
 18 assistance as may be necessary to assist the Executive Administrator, the Board of Trustees, and
 19 the State Treasurer in carrying out their duties and responsibilities under this Article. The State
 20 Treasurer may designate any managerial, professional, or policy-making positions as exempt
 21 from the North Carolina Human Resources Act. All exempt employees shall serve at the pleasure
 22 of the State Treasurer, and any vacancies in these positions may be filled by the State Treasurer.
 23 Salaries of exempt employees shall be set by the State Treasurer.

24 (c2) The Executive Administrator may also negotiate, renegotiate and execute contracts
 25 with third parties in the performance of the Executive Administrator's duties and responsibilities
 26 under this Article; provided any contract negotiations, renegotiations and execution with a
 27 Claims Processor, with an optional alternative comprehensive health benefit plan, or program
 28 thereunder, authorized under G.S. 135-48.2, with a preferred provider of institutional or
 29 professional hospital and medical care, or with a pharmacy benefit manager shall be done only
 30 with the consent of the State Treasurer.

31 (d) The Executive Administrator shall quarterly make reports and recommendations on
 32 the Plan to the President Pro Tempore of the Senate and the Speaker of the House of
 33 Representatives."

34 **SECTION 8.(b)** G.S. 126-5(c1)(23) reads as rewritten:

35 "(23) The Executive Administrator and the Deputy Executive Administrator of the
 36 State Health Plan for Teachers and State Employees."

37 **SECTION 9.** G.S. 135-48.20 reads as rewritten:

38 **"§ 135-48.20. Board of Trustees established.**

39 (a) There is established the Board of Trustees of the State Health Plan for Teachers and
 40 State Employees.

41 ...

42 (j) In making appointments, the appointing authorities shall appoint individuals from the
 43 following ~~areas of expertise categories:~~

44 (1) ~~Actuarial science.~~ Individuals with expertise in actuarial science or health
 45 economics.

46 ~~(2) Health economics.~~

47 (3) ~~Health~~ Individuals with expertise in health benefits and administration.

48 (4) ~~Health~~ Individuals with expertise in health law and policy.

49 (5) Physicians who are licensed to practice medicine in this State.

50 In making appointments to the Board under this section, each appointing authority shall
 51 consult with all other appointing authorities prior to making its own appointments to ensure that

1 each of the areas of expertise listed in subdivisions (1) through ~~(4)~~(5) of this subsection is
2 represented by at least one member of the Board.

3"

4 **SECTION 10.** G.S. 90-414.8 reads as rewritten:

5 **"§ 90-414.8. North Carolina Health Information Exchange Advisory Board.**

6 (a) Creation and Membership. – There is hereby established the North Carolina Health
7 Information Exchange Advisory Board within the Department of Information Technology. The
8 Advisory Board shall consist of the following ~~11~~12 members:

9 (1) The following four members appointed by the President Pro Tempore of the
10 Senate:

- 11 a. A licensed physician in good standing and actively practicing in this
12 State.
13 b. A patient representative.
14 c. An individual with technical expertise in health data analytics.
15 d. A representative of a behavioral health provider.

16 (2) The following four members appointed by the Speaker of the House of
17 Representatives:

- 18 a. A representative of a critical access hospital.
19 b. A representative of a federally qualified health center.
20 c. An individual with technical expertise in health information
21 technology.
22 d. A representative of a health system or integrated delivery network.

23 (3) The following three ex officio, nonvoting members:

- 24 a. The State Chief Information Officer or a designee.
25 b. The Director of GDAC or a designee.
26 c. The Secretary of Health and Human Services, or a designee.

27 (4) The following ex officio, voting member:

- 28 a. The Executive Administrator of the State Health Plan for Teachers and
29 State Employees, or a designee.

30 (b) Chairperson. – A chairperson shall be elected from among the members. The
31 chairperson shall organize and direct the work of the Advisory Board.

32 (c) Administrative Support. – The Department of Information Technology shall provide
33 necessary clerical and administrative support to the Advisory Board.

34 (d) Meetings. – The Advisory Board shall meet at least quarterly and at the call of the
35 chairperson. A majority of the Advisory Board constitutes a quorum for the transaction of
36 business.

37 (e) Terms. – In order to stagger terms, in making initial appointments, the President Pro
38 Tempore of the Senate shall designate two of the members appointed under subdivision (1) of
39 subsection (a) of this section to serve for a one-year period from the date of appointment and, the
40 Speaker of the House of Representatives shall designate two members appointed under
41 subdivision (2) of subsection (a) of this section to serve for a one-year period from the date of
42 appointment. The remaining appointed voting members shall serve two-year periods. Future
43 appointees who are voting members shall serve terms of two years, with staggered terms based
44 on this subsection. ~~Voting~~Appointed voting members may serve up to two consecutive terms,
45 not including the abbreviated two-year terms that establish staggered terms or terms of less than
46 two years that result from the filling of a vacancy. Ex officio, nonvoting and voting members are
47 not subject to these term limits. A vacancy other than by expiration of a term shall be filled by
48 the appointing authority.

49 (f) Expenses. – Members of the Advisory Board who are State officers or employees
50 shall receive no compensation for serving on the Advisory Board but may be reimbursed for their
51 expenses in accordance with G.S. 138-6. Members of the Advisory Board who are full-time

1 salaried public officers or employees other than State officers or employees shall receive no
2 compensation for serving on the Advisory Board but may be reimbursed for their expenses in
3 accordance with G.S. 138-5(b). All other members of the Advisory Board may receive
4 compensation and reimbursement for expenses in accordance with G.S. 138-5.

5 (g) Duties. – The Advisory Board shall provide consultation to the Authority with respect
6 to the advancement, administration, and operation of the HIE Network and on matters pertaining
7 to health information technology and exchange, generally. In carrying out its responsibilities, the
8 Advisory Board may form committees of the Advisory Board to examine particular issues related
9 to the advancement, administration, or operation of the HIE Network."

10 **SECTION 11.** Except as otherwise provided, this act is effective when it becomes
11 law.