

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 768
Committee Substitute Favorable 5/2/23
Committee Substitute #2 Favorable 5/3/23

Short Title: LEO Return to Work from Retirement.

(Public)

Sponsors:

Referred to:

April 19, 2023

1 A BILL TO BE ENTITLED
2 AN ACT ALLOWING LAW ENFORCEMENT OFFICERS TO RECEIVE RETIREMENT
3 BENEFITS AND SUBSEQUENTLY RETURN TO SERVICE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** G.S. 128-27 is amended by adding a new subsection to read:

6 "(a4) Continuation of Retirement Benefits. – Notwithstanding any provisions of this
7 Chapter to the contrary, any member who (i) is a law enforcement officer or a justice officer, as
8 defined in G.S. 17E-2, and (ii) has reached 59 1/2 years of age or a normal retirement age safe
9 harbor as designated by the Internal Revenue Code for section 401(a) qualified pension plans and
10 trusts may receive any retirement allowance for which they are otherwise eligible even if they
11 have not retired or otherwise separated from service."

12 **SECTION 1.(b)** G.S. 135-5 is amended by adding a new subsection to read:

13 "(a4) Continuation of Retirement Benefits. – Notwithstanding any provisions of this
14 Chapter to the contrary, any member who is a law enforcement officer and has reached 59 1/2
15 years of age or a normal retirement age safe harbor as designated by the Internal Revenue Code
16 for section 401(a) qualified pension plans and trusts may receive any retirement allowance for
17 which they are otherwise eligible even if they have not retired or otherwise separated from
18 service."

19 **SECTION 2.(a)** G.S. 128-24 is amended by adding the following new subdivisions
20 to read:

21 "(5b) Notwithstanding sub-subdivisions c. and d. of subdivision (5) of this section
22 to the contrary, a beneficiary who retired on an early or service retirement as
23 a law enforcement officer or as a justice officer, as defined in G.S. 17E-2,
24 shall be paid or continue to be paid a retirement allowance without restriction
25 if the following apply:

- 26 a. The beneficiary is subsequently employed as a law enforcement or
27 justice officer.
28 b. The subsequent employment follows a bona fide separation from
29 service, as defined in subdivision (5c) of this section, of not less than
30 one month.
31 c. The employer pays into the Retirement System an amount equal to
32 both the member's and the employer's contributions required by law
33 for the duration of the employment.



1 Service by a beneficiary under this subdivision shall not count as membership
2 service or increase the beneficiary's retirement benefits under this Retirement
3 System.

4 (5c) In order to satisfy Internal Revenue Service requirements that a retirement is
5 a bona fide separation from service, and to protect the actuarial integrity of
6 the Retirement System, a bona fide separation shall be deemed to occur when
7 the beneficiary has severed the employment relationship with the employer,
8 the Retirement System has received all applicable termination notifications,
9 and the employer and beneficiary file original sworn affidavits with the
10 Retirement System attesting that:

11 a. Prior to the retirement, the employer and beneficiary did not have an
12 explicit understanding that the beneficiary would be reemployed by
13 the employer.

14 b. The employer and beneficiary did not reasonably anticipate that, after
15 the retirement, the beneficiary would perform for the employer more
16 than twenty percent (20%) of the average level of bona fide services
17 performed by the beneficiary for the employer during the 36-month
18 period immediately preceding the beneficiary's retirement.

19 (5d) Notwithstanding sub-subdivisions c. and d. of subdivision (5) of this section
20 to the contrary, a beneficiary who retired on an early or service retirement as
21 a law enforcement officer or as a justice officer, as defined in G.S. 17E-2,
22 shall be paid or continue to be paid a retirement allowance without restriction
23 if the beneficiary is subsequently employed as a law enforcement officer or
24 justice officer with an employer other than the employer the beneficiary was
25 employed by at the time of retirement. Service by a beneficiary under this
26 subdivision shall not count as membership service or increase the beneficiary's
27 retirement benefits under this Retirement System."

28 **SECTION 2.(b)** G.S. 135-3 is amended by adding the following new subdivisions

29 to read:

30 "(8b) Notwithstanding sub-subdivisions c. and d. of subdivision (8) of this section
31 to the contrary, a beneficiary who retired on an early or service retirement as
32 a law enforcement officer shall be paid or continue to be paid a retirement
33 allowance without restriction if the following apply:

34 a. The beneficiary is subsequently employed as a law enforcement
35 officer.

36 b. The subsequent employment follows a bona fide separation from
37 service, as defined in subdivision (8c) of this section, of not less than
38 six months.

39 c. The employer pays into the Retirement System an amount equal to the
40 member's and the employer's contributions required by law for the
41 duration of the employment.

42 Service by a beneficiary under this subdivision shall not count as membership
43 service or increase the beneficiary's retirement benefits under this Retirement
44 System.

45 (8c) In order to satisfy Internal Revenue Service requirements that a retirement is
46 a bona fide separation from service, and to protect the actuarial integrity of
47 the Retirement System, a bona fide separation shall be deemed to occur when
48 the beneficiary has severed the employment relationship with the employer,
49 the Retirement System has received all applicable termination notifications,
50 and the employer and beneficiary file original sworn affidavits with the
51 Retirement System attesting that:

- a. Prior to the retirement, the employer and beneficiary did not have an explicit understanding that the beneficiary would be reemployed by the employer.
- b. The employer and beneficiary did not reasonably anticipate that, after the retirement, the beneficiary would perform for the employer more than twenty percent (20%) of the average level of bona fide services performed by the beneficiary for the employer during the 36-month period immediately preceding the beneficiary's retirement."

SECTION 3.(a) G.S. 143-166.41(c) reads as rewritten:

"(c) Payment to a retired officer under the provisions of this section shall cease at the first of:

- ...
- (3) The first day of reemployment by any State department, agency, or institution, except that this subdivision does not apply to an officer returning to State employment in a public safety position, or in a position exempt from the North Carolina Human Resources Act in an agency other than the agency from which that officer retired. For the purposes of this subdivision, "public safety position" means a position as a law enforcement officer, as defined in G.S. 135-1 or G.S. 143-166.30, but does not include a position as a probation or parole officer, as defined in G.S. 135-1."

SECTION 3.(b) G.S. 143-166.42(c1) reads as rewritten:

"(c1) Notwithstanding the provisions of subdivision (3) of subsection (c) of this section, payments to a retired officer shall not cease when a local government employer employs a retired officer for any of the following:

- (1) ~~In a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System position.~~ For the purposes of this subdivision, "public safety position" means a position as a law enforcement officer, as defined in G.S. 128-21 or G.S. 143-166.50, or a position as a justice officer, as defined in G.S. 17E-2.

...."

SECTION 3.(c) G.S. 143-166.85 reads as rewritten:

"§ 143-166.85. Benefits.

...
 (d) ~~Monthly pensions payable under this Article will cease upon the full-time reemployment of a pensioner with an employer participating in the Local Governmental Employees' Retirement System for as long as the pensioner is so reemployed.~~

...."

SECTION 4. If the Internal Revenue Service notifies the State Treasurer that any provision of this act is not in compliance with any IRS law or regulation, then the provisions to which the IRS determination pertains shall expire 30 days from receipt of the determination by the State Treasurer. The State Treasurer shall notify the Revisor of Statutes of any IRS determinations that require the expiration of any provisions of this act.

SECTION 5. Except as provided in Section 4 of this act, if any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

SECTION 6. This act is effective October 1, 2023, and, except as otherwise provided, expires October 1, 2027.