

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

2

HOUSE BILL 235
Committee Substitute Favorable 6/12/91

Short Title: Clarify Law Enfor. Retire.

(Public)

Sponsors:

Referred to:

March 12, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE LAW REGARDING LAW ENFORCEMENT OFFICER
3 DISABILITY RETIREMENT.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 128-27(e) reads as rewritten:

6 "(e) Reexamination of Beneficiaries Retired on Account of Disability. – Once
7 each year during the first five years following retirement of a member on a disability
8 allowance, and once in every three-year period thereafter, the Board of Trustees may,
9 and upon his application shall, require any disability beneficiary who has not yet
10 attained the age of 60 years to undergo a medical examination, such examination to be
11 made at the place of residence of said beneficiary or other place mutually agreed upon,
12 by the physician or physicians designated by the Board of Trustees. Should any
13 disability beneficiary who has not yet attained the age of 60 years refuse to submit to at
14 least one medical examination in any such year by a physician or physicians designated
15 by the Board of Trustees, his allowance may be discontinued until his withdrawal of
16 such refusal, and should his refusal continue for one year, all his rights in and to his
17 pension may be revoked by the Board of Trustees.

18 (1) The Board of Trustees shall determine whether a disability beneficiary
19 is engaged in or is able to engage in a gainful occupation paying more
20 than the difference, as hereinafter indexed, between his disability
21 retirement allowance and the gross compensation earned as an
22 employee during the 12 consecutive months in the final 48 months of
23 service prior to retirement producing the highest gross compensation

1 excluding any compensation received on account of termination. If the
2 disability beneficiary is earning or is able to earn more than the
3 difference, ~~the portion of his disability retirement allowance not~~
4 ~~provided by his contributions shall be reduced to an amount which,~~
5 ~~together with the portion of the disability retirement allowance provided by~~
6 ~~his contributions and the amount earnable by him shall equal the amount of~~
7 ~~his gross compensation prior to retirement. by one dollar (\$1.00) for each~~
8 ~~two dollars (\$2.00) of earnings in excess of the difference, provided~~
9 ~~that the disability retirement allowance shall not be reduced below the~~
10 ~~amount provided by his own contributions. This difference shall be~~
11 increased on January 1 each year by the ratio of the Consumer Price
12 Index to the Index one year earlier, calculated to the nearest tenth of a
13 percent (1/10 of 1%). Should the earning capacity of the disability
14 beneficiary later change, the portion of his disability retirement
15 allowance not provided by his contributions may be further modified.
16 In lieu of the reductions on account of a disability beneficiary earning
17 more than the aforesaid difference, he may elect to convert his
18 disability retirement allowance to a service retirement allowance
19 calculated on the basis of his average final compensation and
20 creditable service at the time of disability retirement and his age at the
21 time of conversion to service retirement. This election is irrevocable.

22 The provisions of this subdivision shall not apply to beneficiaries
23 of the Law Enforcement Officers' Retirement System transferred to
24 this Retirement System who commenced retirement on and before July
25 1, 1981.

26 (2) Should a disability beneficiary under the age of 62 years be restored to
27 active service at a compensation not less than his average final
28 compensation, his retirement allowance shall cease, he shall again
29 become a member of the Retirement System and he shall contribute
30 thereafter at the contribution rate which is applicable during his
31 subsequent membership service. Any prior service certificate on the
32 basis of which his service was computed at the time of his retirement
33 shall be restored to full force and effect, and in addition, upon his
34 subsequent retirement he shall be credited with all his service as a
35 member, but should he be restored to active service on or after the
36 attainment of the age of 50 years his pension upon subsequent
37 retirement shall not exceed the sum of the pension which he was
38 receiving immediately prior to his last restoration after June 30, 1951,
39 and the pension that he would have received on account of his service
40 since such last restoration had he entered service at that time as a new
41 entrant.

42 (3) Notwithstanding the foregoing, a member retired on a disability
43 retirement allowance who is restored to service and subsequently
44 retires on or after July 1, 1971, shall be entitled to an allowance not

1 less than the allowance prescribed in a below reduced by the amount in
2 b below.

3 a. The allowance to which he would have been entitled if he were
4 retiring for the first time, calculated on the basis of his total
5 creditable service represented by the sum of his creditable
6 service at the time of his first retirement and his creditable
7 service after he was restored to service.

8 b. The actuarial equivalent of the retirement benefits he previously
9 received.

10 (3a) Notwithstanding the foregoing, a member retired on a disability
11 retirement allowance who is restored to service and subsequently
12 retires on or after July 1, 1985, shall be entitled to an allowance to
13 which he would have been entitled if he were retiring for the first time,
14 calculated on the basis of his total creditable service represented by the
15 sum of his creditable service at the time of his first retirement and his
16 creditable service after he was restored to service. Provided, however,
17 any election of an optional allowance cannot be changed unless the
18 member subsequently completes three years of membership service
19 after being restored to service.

20 (4) As a condition to the receipt of the disability retirement allowance
21 provided for in G.S. 128-27(d), (d1), (d2) and (d3) each member
22 retired on a disability retirement allowance shall, on or before April 15
23 of each calendar year, provide the Board of Trustees with a statement
24 of his or her income received as compensation for services, including
25 fees, commissions or similar items, and income received from
26 business, for the previous calendar year. Such statement shall be filed
27 on a form as required by the Board of Trustees.

28 The Director of the State Retirement Systems shall contact any
29 State or federal agency which can provide information to substantiate
30 the statement required to be submitted by this subdivision and may
31 enter into agreements for the exchange of information.

32 (5) Notwithstanding any other provisions of this Article to the contrary, a
33 beneficiary who was a beneficiary retired on a disability retirement
34 with the Law Enforcement Officers' Retirement System at the time of
35 the transfer of law enforcement officers employed by a participating
36 employer and beneficiaries last employed by a participating employer
37 to this Retirement System and who also was a contributing member of
38 this Retirement System at that time, shall continue to be paid his
39 retirement allowance without restriction and may continue as a
40 member of this Retirement System with all the rights and privileges
41 appendant to membership. Any beneficiary who retired on a disability
42 retirement allowance as an employee of any participating employer
43 under the Law Enforcement Officers' Retirement System and becomes
44 employed as an employee other than as a law enforcement officer by

1 an employer participating in the Retirement System after the
2 aforementioned transfer shall continue to be paid his retirement
3 allowance without restriction and may continue as a member of this
4 Retirement System with all the rights and privileges appendant to
5 membership until January 1, 1989, at which time his retirement
6 allowance shall cease and his subsequent retirement shall be
7 determined in accordance with the preceding subdivision (3a) of this
8 section. Any beneficiary as hereinbefore described who becomes
9 employed as a law enforcement officer by an employer participating in
10 the Retirement System shall cease to be a beneficiary and shall
11 immediately commence membership and his subsequent retirement
12 shall be determined in accordance with subdivision (3a) of this section.

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

28 Sec. 2. G.S. 135-5(e) reads as rewritten:

29 "(e) Reexamination of Beneficiaries Retired for Disability. – The provisions of
30 this subsection shall be applicable to members retired on a disability retirement
31 allowance and shall not be applicable to members in service on or after January 1, 1988.
32 Once each year during the first five years following retirement of a member on a
33 disability retirement allowance, and once in every three-year period thereafter, the
34 Board of Trustees may, and upon his application shall, require any disability beneficiary
35 who has not yet attained the age of 60 years to undergo a medical examination, such
36 examination to be made at the place of residence of said beneficiary or other place
37 mutually agreed upon, by a physician or physicians designated by the Board of
38 Trustees. Should any disability beneficiary who has not yet attained the age of 60 years
39 refuse to submit to at least one medical examination in any such year by a physician or
40 physicians designated by the Board of Trustees, his allowance may be discontinued
41 until his withdrawal of such refusal, and should his refusal continue for one year all his
42 rights in and to his pension may be revoked by the Board of Trustees.

- 43 (1) The Board of Trustees shall determine whether a disability beneficiary
44 is engaged in or is able to engage in a gainful occupation paying more

1 than the difference, as hereinafter indexed, between his disability
2 retirement allowance and the gross compensation earned as an
3 employee during the 12 consecutive months of service in the final 48
4 months prior to retirement producing the highest gross compensation
5 excluding any compensation received on account of termination. If the
6 disability beneficiary is earning or is able to earn more than the
7 difference, ~~the portion of his disability retirement allowance not~~
8 ~~provided by his contributions shall be reduced to an amount which,~~
9 ~~together with the portion of the disability retirement allowance provided by~~
10 ~~his contributions and the amount earnable by him shall equal the amount of~~
11 ~~his gross compensation prior to retirement. by one dollar (\$1.00) for each~~
12 ~~two dollars (\$2.00) of earnings in excess of the difference, provided~~
13 that the disability retirement allowance shall not be reduced below the
14 amount provided by his own contributions. This difference shall be
15 increased on January 1 each year by the ratio of the Consumer Price
16 Index to the Index one year earlier, calculated to the nearest tenth of
17 one percent (1/10th of 1%). Should the earning capacity of the
18 disability beneficiary later change, the portion of his disability
19 retirement allowance not provided by his contributions may be further
20 modified. In lieu of the reductions on account of a disability
21 beneficiary earning more than the aforesaid difference, he may elect to
22 convert his disability retirement allowance to a service retirement
23 allowance calculated on the basis of his average final compensation
24 and creditable service at the time of disability and his age at the time
25 of conversion to service retirement. This election is irrevocable.
26 Provided, the provisions of this subdivision shall not apply to
27 beneficiaries of the Law-Enforcement Officers' Retirement System
28 transferred to this Retirement System who commenced retirement on
29 and before July 1, 1981.

- 30 (2) Should a disability beneficiary under the age of 60 years be restored to
31 active service at a compensation not less than his average final
32 compensation, his retirement allowance shall cease, he shall again
33 become a member of the Retirement System, and he shall contribute
34 thereafter at the same rate he paid prior to disability; provided that, on
35 and after July 1, 1971, if a disability beneficiary under the age of 62
36 years is restored to active service at a compensation not less than his
37 average final compensation, his retirement allowance shall cease, he
38 shall again become a member of the Retirement System, and he shall
39 contribute thereafter at the uniform contribution rate payable by all
40 members. Any such prior service certificate on the basis of which his
41 service was computed at the time of his retirement shall be restored to
42 full force and effect, and, in addition, upon his subsequent retirement
43 he shall be credited with all his service as a member, but should he be
44 restored to active service on or after the attainment of the age of 50

1 years his pension upon subsequent retirement shall not exceed the sum
2 of the pension which he was receiving immediately prior to his last
3 restoration and the pension that he would have received on account of
4 his service since his last restoration had he entered service at the time
5 as a new entrant.

6 (3) Notwithstanding the foregoing, a member retired on a disability
7 retirement allowance who is restored to service and subsequently
8 retires on or after July 1, 1971, shall be entitled to an allowance not
9 less than the allowance described in a. below reduced by the amount in
10 b. below:

11 a. The allowance to which he would have been entitled if he were
12 retiring for the first time, calculated on the basis of his total
13 creditable service represented by the sum of his creditable
14 service at the time of his first retirement and his creditable
15 service after he was restored to service.

16 b. The actuarial equivalent of the retirement benefits he previously
17 received.

18 (3a) Notwithstanding the foregoing, a member retired on a disability
19 retirement allowance who is restored to service and subsequently
20 retires on or after July 1, 1985, shall be entitled to an allowance to
21 which he would have been entitled if he were retiring for the first time,
22 calculated on the basis of his total creditable service represented by the
23 sum of his creditable service at the time of his first retirement and his
24 creditable service after he was restored to service. Provided, however,
25 any election of an optional allowance cannot be changed unless the
26 member subsequently completes three years of membership service
27 after being restored to service.

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

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

40 (5) Notwithstanding any other provisions of this Article to the contrary, a
41 beneficiary who was a beneficiary retired on a disability retirement
42 with the Law-Enforcement Officers' Retirement System at the time of
43 the transfer of law-enforcement officers employed by a participating
44 employer and beneficiaries last employed by a participating employer

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

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

37 Sec. 3. This act becomes effective July 1, 1991.