

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 203

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

Sponsors: Representatives Wheatley and Carson Smith (Primary Sponsors).

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

Referred to: Pensions and Retirement, if favorable, State Government, if favorable, Rules, Calendar, and Operations of the House

February 27, 2023

A BILL TO BE ENTITLED

AN ACT MAKING TECHNICAL CORRECTIONS AND OTHER CONFORMING AND CLARIFYING CHANGES TO THE LAWS GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND TO OTHER RELATED STATUTES, AS RECOMMENDED BY THE DEPARTMENT OF STATE TREASURER.

The General Assembly of North Carolina enacts:

PART I. CHANGES TO THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

SECTION 1.1. G.S. 135-3(8)f. reads as rewritten:

"f. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed by, or otherwise engaged to perform services for, an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee for service basis, whether contractual or otherwise at any time during the six months immediately following the effective date of retirement, then the option of the two listed below that has the lesser financial impact on the member, as determined by the Retirement System, shall be applied:

1. The member's retirement shall be deemed effective the month after the last month the member performed services for a participating employer, and the member shall repay all retirement benefits paid up to the deemed effective date, provided the member thereafter has satisfied the six-month separation required by G.S. 135-1(20).
2. The member shall make a lump-sum payment to the Retirement System equal to three times the amount of compensation earned during the six months immediately following the effective date of retirement. If the member is unable to make a lump-sum payment, the member can elect to have the entirety of their monthly retirement benefit withheld until the Retirement System has recovered three times the amount of compensation earned during the six months immediately following the effective date of retirement."



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1 **SECTION 1.2.** G.S. 135-4 reads as rewritten:

2 "**§ 135-4. Creditable service.**

3 ...

4 (h) During periods when a member is on an approved leave of absence and is receiving
5 less than the member's full compensation, the member will be deemed to be in service only if the
6 member is contributing to the Retirement System as provided in G.S. 135-8(b)(5). If the member
7 is so contributing, the annual rate of compensation paid to such employee immediately before
8 the approved leave of absence began will be deemed to be the actual compensation rate of the
9 employee during the leave of absence.

10 ...

11 (ff) Retroactive Membership Service. – A member who is reinstated to service as an
12 employee as defined in G.S. 135-1(10) or as a teacher as defined in G.S. 135-1(25) retroactively
13 to the date of prior involuntary termination with back pay, as defined by the State Human
14 Resources Commission, and associated benefits may be allowed membership service, after
15 submitting clear and convincing evidence of the reinstatement, payment of back pay, and
16 restoration of associated benefits, as follows:

17 (1) When the reinstatement to service is by court order, final decision of an
18 Administrative Law Judge, or with the approval of the Office of State Human
19 Resources Director, and is:

- 20 a. Within 90 days of the involuntary termination, by the payment of
21 employee and employer contributions that would have been paid; or
22 b. After 90 days of the involuntary termination, by the payment of the
23 employee and employer contributions that would have been paid plus
24 interest compounded annually at a rate equal to the greater of the
25 average yield on the pension accumulation fund for the preceding
26 calendar year or the actuarial investment rate-of-return assumption, as
27 adopted by the Board of Trustees.

28 (2) When the reinstatement to service is by settlement agreement voluntarily
29 entered into by the affected parties, by the payment of a lump-sum ~~amount.~~
30 ~~The amount,~~ the member shall purchase this service by paying a lump sum
31 amount to the annuity savings fund equal to the full liability increase due to
32 the additional service credits on the basis of the assumptions used for the
33 purposes of the actuarial valuation of the liabilities of the Retirement System,
34 except for the following assumptions specific to this calculation: (i) the
35 allowance shall be assumed to commence at the earliest age at which the
36 member could retire on an unreduced retirement allowance and (ii) assumed
37 annual postretirement allowance increases as set by the Board of Trustees
38 upon the advice of the consulting actuary. The calculation of the amount
39 payable shall also include an administrative fee to be set by the Board.

40 "

41 **SECTION 1.3.** G.S. 135-5(l) reads as rewritten:

42 "(l) Death Benefit Plan. – There is hereby created a Group Life Insurance Plan (hereinafter
43 called the "Plan") which is established as an employee welfare benefit plan that is separate and
44 apart from the Retirement System and under which the members of the Retirement System shall
45 participate and be eligible for group life insurance benefits. The Plan shall be part of the North
46 Carolina Teachers' and State Employees' Benefit Trust, as established under G.S. 135-7(g). All
47 receipts, transfers, appropriations, contributions, investment earnings, and other income
48 belonging to the Plan shall be deposited in the Benefit Trust. All benefits and expenses against
49 the Plan shall be disbursed from the Benefit Trust. Employer and non-employer contributions to
50 the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit
51 Trust are dedicated to providing benefits to participants, surviving spouses, and the members'

1 estates in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject
2 to the claims of creditors of the employees and non-employees making contributions to the
3 Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and
4 administrators, and are not subject to the claims of creditors of members and beneficiaries.
5 Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the
6 Fund as approved by the Board of Trustees.

7 ...

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

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

- 19 (1) For the purpose of determining eligibility only, in this subsection "calendar
20 year" shall mean any period of 12 consecutive months or, if less, the period
21 covered by an annual contract of employment. For all other purposes in this
22 subsection "calendar year" shall mean the 12 months beginning January 1 and
23 ending December 31.
- 24 (2) Last day of actual service shall be:
- 25 a. ~~When employment~~ When the employee has been terminated, the last
26 day the member actually worked.
- 27 b. ~~When employment~~ When the employee has not been terminated, the
28 date on which an absent member's sick and annual leave expire, unless
29 ~~he the member~~ is on approved leave of absence and is in service under
30 the provisions of G.S. 135-4(h).
- 31 c. ~~When a participant's employment~~ When the member's service is
32 interrupted by reason of service in the Uniformed Services, as that
33 term is defined in section 4303(16) of the Uniformed Services
34 Employment and Reemployment Rights Act, Public Law 103-353, and
35 the participant does not return immediately after that service to
36 employment with a covered employer in this System, the date on
37 which the participant was first eligible to be separated or released from
38 his or her involuntary military service.

39"

40 **SECTION 1.4.** G.S. 135-8(b)(5) reads as rewritten:

41 "(b) Annuity Savings Fund. – The annuity savings fund shall be a fund in which shall be
42 accumulated contributions from the compensation of members to provide for their annuities.
43 Contributions to any payments from the annuity savings fund shall be made as follows:

44 ...

- 45 (5) The Board of Trustees may approve the purchase of creditable service by any
46 member for leaves of absence or for interrupted service to an employer only
47 for the purpose of acquiring knowledge, talents, or abilities and to increase the
48 efficiency of service to the employer, subject to the provisions of this
49 subdivision. A leave of absence or interrupted service may be approved for
50 purchase under this subdivision for a period of employment as a teacher in a
51 charter school. Any other leave of absence or interrupted service shall qualify

1 for purchase under this subdivision only if (i) during the time of the leave or
 2 interrupted service the member is enrolled and participates in a full time
 3 degree program at an accredited institution of higher education, (ii) the
 4 member is not paid compensation, other than a stipend resulting from
 5 participation in a full-time degree program, for the activity in which he or she
 6 is acquiring knowledge, talents, or abilities, and (iii) the service is not
 7 purchased for any month in which the member performed any services for any
 8 of the organizations listed in ~~G.S. 135-27(a) or G.S. 135-27(f)~~, G.S. 135-27(a)
 9 or G.S. 135-27(f), or a successor to any of those organizations. Approval by
 10 the Board under this subdivision shall be made prior to the purchase of the
 11 creditable service, is limited to a career total of six years for each member,
 12 and may be obtained in the following manner:
 13"
 14

15 PART II. CHANGES PERTAINING TO THE LOCAL GOVERNMENTAL 16 EMPLOYEES' RETIREMENT SYSTEM

17 **SECTION 2.1.** G.S. 128-26(v)(2) reads as rewritten:

18 "(2) When the reinstatement to service is by settlement agreement voluntarily
 19 entered into by the affected parties, by the payment of a lump-sum ~~amount.~~
 20 ~~The amount, the~~ member shall purchase this service by paying a lump sum
 21 amount to the annuity savings fund equal to the full liability increase due to
 22 the additional service credits on the basis of the assumptions used for the
 23 purposes of the actuarial valuation of the liabilities of the Retirement System,
 24 except for the following assumptions specific to this calculation: (i) the
 25 allowance shall be assumed to commence at the earliest age at which the
 26 member could retire on an unreduced retirement allowance and (ii) assumed
 27 annual postretirement allowance increases as set by the Board of Trustees
 28 upon the advice of the consulting actuary. The calculation of the amount
 29 payable shall also include an administrative fee to be set by the Board."

30 **SECTION 2.2.** G.S. 128-26(y)(3) reads as rewritten:

31 "(3) Option three. – An adjustment to the required employer contribution rate for
 32 the employer as provided in ~~G.S. 128-30(d)(4b)~~, G.S. 128-30(d)(4a)."

33 **SECTION 2.3.** G.S. 128-27(e)(6) reads as rewritten:

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

48 **SECTION 2.4.** G.S. 128-26(g) reads as rewritten:

49 "(g) During periods when a member is on an approved leave of absence and is receiving
 50 less than his full compensation, he will be deemed to be in service only if he is contributing to
 51 the Retirement System as provided in G.S. 128-30(b)(4). If he is so contributing, the annual rate

1 of compensation paid to such employee immediately before the leave of absence began will be
2 deemed to be the actual compensation rate of the employee during the leave of absence."

3 **SECTION 2.5.** G.S. 128-27(l) reads as rewritten:

4 "(l) Death Benefit Plan. – The provisions of this subsection shall become effective for any
5 employer only after an agreement to that effect has been executed by the employer and the
6 Director of the Retirement System. There is hereby created a Group Life Insurance Plan
7 (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is
8 separate and apart from the Retirement System and under which the members of the Retirement
9 System shall participate and be eligible for group life insurance benefits. The Plan shall be part
10 of the North Carolina Teachers' and State Employees' Benefit Trust, as established under
11 G.S. 135-7(g). All receipts, transfers, appropriations, contributions, investment earnings, and
12 other income belonging to the Plan shall be deposited in the Benefit Trust. All benefits and
13 expenses against the Plan shall be disbursed from the Benefit Trust. Employer and non-employer
14 contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets
15 of the Benefit Trust are dedicated to providing benefits to members and beneficiaries in
16 accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the
17 claims of creditors of the employees and non-employees making contributions to the Benefit
18 Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and
19 administrators, and are not subject to the claims of creditors of members and beneficiaries.
20 Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the
21 Fund as approved by the Board of Trustees.

22 ...

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

- 24 (1) For the purpose of determining eligibility only, in this subsection "calendar
25 year" shall mean any period of 12 consecutive months. For all other purposes
26 in this subsection "calendar year" shall mean the 12 months beginning January
27 1 and ending December 31.
- 28 (2) Last day of actual service shall be:
- 29 a. ~~When employment~~ When the employee has been terminated, the last
30 day the member actually worked.
- 31 b. ~~When employment~~ When the employee has not been terminated, the
32 date on which an absent member's sick and annual leave expire.
- 33 c. ~~When a participant's employment~~ When the member's service is
34 interrupted by reason of service in the Uniformed Services, as that
35 term is defined in section 4303(16) of the Uniformed Services
36 Employment and Reemployment Rights Act, Public Law 103-353, and
37 the participant does not return immediately after that service to
38 employment with a covered employer in this System, the date on
39 which the participant was first eligible to be separated or released from
40 his or her involuntary military service.

41"

42 **SECTION 2.6.** G.S. 128-30(b2) reads as rewritten:

43 "(b2) Retroactive Adjustment in Compensation or an Underreporting of Compensation. –
44 A member or beneficiary who is awarded backpay in cases of a denied promotional opportunity
45 or wrongful demotion in which the aggrieved member or beneficiary is granted a promotion or a
46 demotion is reversed retroactively, or in cases in which an employer errs in the reporting of
47 compensation, including the employee and employer contributions, the member or beneficiary
48 and employer may make employee and employer contributions on the retroactive or additional
49 compensation after submitting clear and convincing evidence of the retroactive promotion or
50 underreporting of compensation, as follows:

51 ...

1 In the event the retroactive adjustment in compensation or the underreported compensation
 2 is for a period that occurs during the four consecutive calendar years that would have produced
 3 the highest average annual compensation pursuant to ~~G.S. 135-1(5)~~, ~~G.S. 128-21(5)~~, the
 4 compensation the member or beneficiary would have received during the period shall be included
 5 in calculating the member's or beneficiary's average final compensation only in the event the
 6 appropriate employee and employer contributions are paid on such compensation.

7 An employer error in underreporting compensation shall not include a retroactive increase in
 8 compensation that occurs during the four consecutive calendar years that would have produced
 9 the highest average annual compensation pursuant to ~~G.S. 135-1(5)~~, ~~G.S. 128-21(5)~~, for reasons
 10 other than a wrongfully denied promotional opportunity or wrongful demotion where the member
 11 is promoted or the demotion is reversed retroactively."
 12

13 **PART III. CHANGES PERTAINING TO THE DISABILITY INCOME PLAN OF** 14 **NORTH CAROLINA**

15 **SECTION 3.1.** G.S. 135-102(a) reads as rewritten:

16 "(a) The provisions of this Article shall be administered by the Department of State
 17 Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement ~~System~~
 18 ~~System, except where otherwise provided~~, and all expenses in connection with the administration
 19 of the Plan, except for expenses incurred by and properly charged to the employer, shall be
 20 charged against and paid from the trust fund as created and provided in this Article."

21 **SECTION 3.2.** G.S. 135-105(a)(4) reads as rewritten:

22 "(4) The participant's employer and ~~attending~~-physician certify that the participant
 23 is mentally or physically incapacitated for the further performance of duty."
 24

25 **PART IV. CHANGES PERTAINING TO THE APPLICATION OF NET PROCEEDS** 26 **FOR STATE LANDS**

27 **SECTION 4.** G.S. 146-30 reads as rewritten:

28 "**§ 146-30. Application of net proceeds.**

29 (a) The net proceeds of any disposition made in accordance with this Subchapter shall be
 30 handled in accordance with the following priority:

- 31 (1) First, in accordance with the provisions of any trust or other instrument of title
 32 whereby title to real property was acquired.
- 33 (2) Second, as provided by any other act of the General Assembly.
- 34 (3) Third, by depositing the net proceeds ~~with the State Treasurer~~ in accordance
 35 with Article 6A of Chapter 147 of the General Statutes.

36 Nothing in this section, however, prohibits the disposition of any State lands by exchange for
 37 other lands, but if the appraised value in fee simple of any property involved in the exchange is
 38 at least twenty-five thousand dollars (\$25,000), then the exchange shall not be made without
 39 consultation with the Joint Legislative Commission on Governmental Operations.

40 ...

41 (d) Notwithstanding any other provision of this Subchapter, the following exceptions
 42 apply:

43 ...

- 44 (6) The following provisions apply with respect to land owned by or under the
 45 supervision and control of the Department of Agriculture and Consumer
 46 Services:

- 47 a. The net proceeds derived from the sale of land shall be deposited ~~with~~
 48 ~~the State Treasurer~~ in a capital improvement account to the credit of
 49 the Department of Agriculture and Consumer Services, to be used for
 50 such specific capital improvement projects or other purposes as are

- 1 provided by transfer of funds from those accounts in an act of the
2 General Assembly.
- 3 b. The net proceeds derived from the sale of timber and other products of
4 land shall be deposited in ~~accounts at the~~ accounts to the credit of the
5 Department of Agriculture and Consumer Services to be used for
6 operational expenses of the Department incurred for restoration and
7 stewardship of the land.
- 8 c. Except as otherwise specifically provided by law, the Department of
9 Agriculture and Consumer Services is subject to Article 6A of Chapter
10 147 of the General Statutes with respect to net proceeds required to be
11 deposited as provided in this subdivision.
- 12 (7) The net proceeds derived from the sale of park land owned by or under the
13 supervision and control of the Department of Natural and Cultural Resources
14 shall be deposited ~~with the State Treasurer~~ in a capital improvement account
15 to the credit of the Department of Administration to be used for the purpose
16 of park land acquisition as provided by transfer of funds from those accounts
17 in the Capital Improvement Appropriations Act. In the Capital Improvement
18 Appropriations Act, line items for purchase of park and agricultural lands will
19 be established for use by the Departments of Administration and Agriculture.
20 The use of these funds for any specific capital improvement project or land
21 acquisition is subject to approval by the Director of the Budget. No other use
22 shall be made of funds in these line items without approval by the General
23 Assembly except for incidental expenses related to the project or land
24 acquisition. Additionally, with the approval of the Director of the Budget,
25 either Department may request funds from the Contingency and Emergency
26 Fund when the necessity of prompt purchase of available land can be
27 demonstrated and funds in the capital improvement accounts are insufficient.
28 Except as otherwise specifically provided by law, the Department of
29 Administration is subject to Article 6A of Chapter 147 of the General Statutes
30 with respect to net proceeds required to be deposited as provided in this
31 subdivision.
- 32 (8) The net proceeds derived from the sale of any portion of the land owned by
33 the State in the Camp Butner reservation shall be deposited ~~with the State~~
34 ~~Treasurer~~ in a capital improvement account to the credit of the Department of
35 Health and Human Services to make capital improvements on or to property
36 owned by the State in the Camp Butner reservation subject to approval by the
37 Office of State Budget and Management. The net proceeds derived from the
38 sale of timber from land owned by the State in the Camp Butner reservation
39 shall be deposited with the State Treasurer in a capital improvement account
40 to the credit of the Department of Public Safety to be used to support the North
41 Carolina National Guard's Camp Butner Training Center and other North
42 Carolina National Guard-operated Training Centers. The definition of "Camp
43 Butner reservation" in G.S. 122C-3 applies to this subdivision. Except as
44 otherwise specifically provided by law, the following provisions apply with
45 respect to net proceeds required to be deposited as provided in this
46 subdivision:
- 47 a. The Department of Health and Human Services is subject to Article
48 6A of Chapter 147 of the General Statutes with respect to net proceeds
49 that must be deposited to the credit of the Department of Health and
50 Human Services.

1 b. The Department of Public Safety is subject to Article 6A of Chapter
2 147 of the General Statutes with respect to net proceeds that must be
3 deposited to the credit of the Department of Public Safety.

4 "

5

6 **PART V. EFFECTIVE DATE**

7 **SECTION 5.** This act becomes effective January 1, 2024.